

**STATE OF NEW JERSEY  
OFFICE OF ADMINISTRATIVE LAW  
BEFORE HONORABLE GAIL M. COOKSON, ALJ**

<b>IN THE MATTER OF THE PETITION</b>	)	
<b>OF PUBLIC SERVICE ELECTRIC</b>	)	
<b>AND GAS COMPANY FOR</b>	)	<b>OAL Docket No. PUC 08129-12</b>
<b>APPROVAL TO OFFER NEW</b>	)	
<b>APPLIANCE SERVICE PRODUCTS</b>	)	<b>BPU Docket No. GO12030188</b>
<b>AND/OR SERVICES IN</b>	)	
<b>ACCORDANCE WITH <u>N.J.A.C. 14:4-</u></b>	)	
<b>3.6(a) and (g)</b>	)	
	)	

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**INITIAL BRIEF ON BEHALF THE  
DIVISION OF RATE COUNSEL**

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**STEFANIE A. BRAND, ESQ.  
DIRECTOR, DIVISION OF RATE COUNSEL**

**DIVISION OF RATE COUNSEL  
31 Clinton Street, 11<sup>th</sup> Floor  
P. O. Box 46005  
Newark, New Jersey 07101  
Phone: 973-648-2690  
Email: [njratepaver@rpa.state.nj.us](mailto:njratepaver@rpa.state.nj.us)**

**ON BRIEF:**

**Christine M. Juarez, Esq.  
Kurt S. Lewandowski, Esq.**

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## I. SUMMARY OF POSITION

The Electric Discount & Energy Competition Act (“EDECA”), N.J.S.A. 48:3-49 et. seq., limits the ability of a public utility to expand its competitive service offerings. Any proposed expansion requires the approval of the Board of Public Utilities (“BPU” or “Board”). Under EDECA, a public gas or electric utility may expand its competitive services only if the new service fits within one of five limited categories. N.J.S.A. 48:3-58(b). If the proposed competitive service does not fit into one of these five categories, the utility’s petition must be denied.

In the present case, Public Service Electric & Gas Company (“PSE&G” or “Company”) filed a petition to expand its competitive service offerings. More specifically, PSE&G proposes to add new service offerings to those services and products provided by its gas utility’s Appliance Service Business (“Appliance Service Business”) unit. As set forth below, only two of PSE&G’s proposed service offerings fit into one of the permissible categories set forth in EDECA. These two proposals include a proposed WorryFree Contract for gas grills and a proposed WorryFree Contract for pool heaters. These two proposals satisfy the EDECA requirement because prior to the passage of EDECA, PSE&G performed repairs of gas grills and pool heaters. Therefore, these two proposals can be said to be “substantially similar” to PSE&G’s pre-EDECA offerings. N.J.S.A. 48:3-58(b)(4). None of PSE&G’s other proposed services fit into any of the EDECA categories. With the exception of WorryFree Contracts for gas grills and pool heaters, PSE&G’s petition should be denied as a matter of law.

In the alternative, even if Your Honor finds that some or all of PSE&G’s proposals satisfy the EDECA requirements, there are valid public policy reasons to limit

the expansion of PSE&G's competitive services. EDECA gives Your Honor broad discretion in whether or not to approve new competitive services. Your Honor should consider the competitive advantage PSE&G enjoys over its competitors in setting limits on the expansion of PSE&G's services. As New Jersey's largest electric and gas utility, PSE&G's enjoys endless opportunities to market and sell its competitive services when responding to calls from regulated utility customers. PSE&G's competitors do not enjoy this kind of access to customers and their homes. Rather than facilitating competition, as EDECA was intended to do, an expansion of PSE&G's competitive services will only stymie competition. In light of these concerns, any expansion of PSE&G's offerings should be very limited.

The proposed expansion of PSE&G's Appliance Service Business offerings also presents ratemaking issues. Historically, the margins earned by the Appliance Service Business are only accounted for in the course of a base rate proceeding. In between base rate cases, the incremental margin revenues accrue to the benefit of PSE&G's shareholders. Given the growth of PSE&G's Appliance Service Business since its last base rate case, if the proposed services are approved, Rate Counsel respectfully submits that the net margins from any new service offering added since PSE&G's last base rate case should be credited to ratepayers on a going forward basis through a clause-type mechanism.

Finally, N.J.A.C. 14:4-3.6(j) places an affirmative duty on the Company to monitor its competitive service business to prevent cross-subsidization by its gas utility operations. In the recent past, auditors performing the EDECA-mandated audit of PSE&G's competitive service business found that PSE&G's hourly fully-allocated labor

rate increased by a significant amount between PSE&G's applications for changes in the hourly labor rate used for its Appliance Service Business. Therefore, in order to prevent cross-subsidization, Rate Counsel respectfully recommends that an affirmative duty be explicitly placed on PSE&G to monitor its fully-allocated hourly rate and file an application for a change in its hourly rate if the fully-allocated hourly rate exceeds the hourly rate used by its Appliance Service Business.

In summary, Rate Counsel respectfully recommends that Your Honor make the following findings in the Initial Decision:

1. With the exception of WorryFree Contracts for gas grills and pool heaters, PSE&G's petition to expand its service offerings should be denied as a matter of law.
2. PSE&G is currently performing new installations of central air conditioners and central heaters, in addition to replacement of these items. It appears that PSE&G has Board approval to perform the replacements only. Accordingly, the Board should investigate whether or not PSE&G should be allowed to continue performing these new installations.
3. PSE&G should be directed to copy Rate Counsel on all future petitions and notices filed with the Board regarding any new appliance service offerings. This recommendation stems from PSE&G's decision in 2011 to implement new appliance service offerings without providing notification to Rate Counsel.
4. If PSE&G is permitted to expand its Appliance Service Business offerings, going forward the incremental net margin revenues from new Appliance Service Business offerings added since the Company's current base rates were

established should be returned to ratepayers on a concurrent basis through a clause-type mechanism.

5. In order to help ensure that its gas utility ratepayers are not subsidizing its Appliance Service Business, an explicit affirmative duty should be placed on PSE&G to monitor its fully-allocated labor rate and to file the necessary application for an hourly rate change if its monitoring shows an increase in the fully-allocated hourly rate.

## II. PROCEDURAL HISTORY & STATEMENT OF FACTS

PSE&G is a regulated public utility engaged in the transmission, distribution, and sale of natural gas and electricity. P-1 (Petition), p. 1. PSE&G currently provides, within the regulated utility, certain competitive services including (a) Appliance Repair Service (b) Appliance Maintenance Service (c) Appliance Replacement Parts Service Contracts (a/k/a WorryFree) and (d) Water Heater, Central Heater, and Central Air Conditioning Replacement. P-1, p. 2. On or about February 29, 2012, PSE&G petitioned the BPU for approval to expand its appliance service offerings pursuant to N.J.A.C. 14:4-3.6(a) and (g). In support of its Petition, PSE&G filed the Direct Testimony of Jorge L. Cardenas, Vice President of Gas Delivery (P-2). PSE&G also filed the Direct Testimony of Stephen Swetz, Director, Corporate Rates & Revenue Requirements (P-3). Specifically, PSE&G seeks to offer the following new services:

- A. Replacement Parts Service Contracts – these contracts are known to the public as “WorryFree” contracts. P-2, p. 3. They cover the repair and replacement of specified parts for the particular appliance for which the customer has purchased the contract. Id. In its petition, PSE&G seeks to expand these contracts to include the following new items: heat pumps, pool heaters, ductless heating/cooling systems (a/k/a mini-splits), and natural gas grills. P-1, p. 4.
- B. Replacement Services – this service replaces the customer’s entire appliance. P-2, p. 4. PSE&G currently offers replacement of water heaters, central heaters, and central air conditioners. RA-4, p. 2. PSE&G seeks to expand these offerings to include the following new appliances: heat pumps, and ductless heating/cooling systems (a/k/a mini-splits). P-1, p. 4.

- C. Installation of New Mini-Split Systems – although this proposal was not included in PSE&G’s petition, Mr. Cardenas’ direct testimony appears to propose that PSE&G be allowed to install new mini-split systems in customers’ homes. P-2, p. 8. The installation of new mini-split systems is an unprecedented addition to PSE&G’s appliance service business, which historically has been limited to service, repair and replacement of existing home appliances.
- D. Installation of New Heat Pumps – This proposal was not included in PSE&G’s petition or pre-filed testimony. However, based on testimony at the evidentiary hearing, it appears PSE&G envisions performing installation of new heat pumps, not simply heat pump replacement. Mr. Cardenas testified that PSE&G envisions providing new heat pump installations for customers who put expansions on their homes and need a way to provide climate control without ductwork. T35:L5-17 (1/9/13).
- E. Home System Protection Contracts – this proposal would be an entirely new offering for PSE&G. This new offering is essentially an insurance contract, since the work will be performed by outside contractors, not PSE&G employees. PSE&G proposes four types of Home System Protection Contracts:
1. Home Sewer Line Protection – this contract will cover the cost for repair or replacement of the main sewer line between the home and the sewer main. P-2, p. 8.
  2. Water Service Line Protection – this contract will cover the cost for repair or replacement of the outside water line located between the curb shut off and the water meter or exterior load bearing wall. Id.

3. **Home Plumbing Systems Protection** – this contract will cover the repair and replacement of specified home plumbing components, such as toilet components, leaky pipes, vent lines, shower and tub valves, etc. Id.

4. **Home Electrical System Protection** – this contract will cover the repair or replacement of electric wiring system components inside the home, including the fuse box, wall outlets, wall switches, interior wiring, etc. Id.

Prior to February 9, 1999, the effective date of EDECA, PSE&G offered appliance repair and WorryFree contracts for both residential customers and small industrial customers.

RA-4, p. 2. Included in these grandfathered services are gas pool heater repair and outdoor gas grill repair. Id. PSE&G also offered central heating and water heating tune-up, and central air conditioning start-up. Id. PSE&G also received Board approval for its water heater replacement program in 1998. Before the passage of EDECA, PSE&G did not have any involvement with mini-split systems or heat pumps.

PSE&G intends to use its own unionized workforce for the proposed new WorryFree repair contracts. P-2, p. 11. Replacements and new installations of heat pumps and mini-splits would be done with a combination of internal labor, and licensed contractors when required by law. T94:L8-L14 (1/9/13). PSE&G intends to use outside contractors for the proposed home water, sewer, plumbing and electrical system protection contracts. P-1, p. 8. This is because these services may require the use of licensed plumbers and/or licensed electricians, and PSE&G is not proposing to become a licensed plumbing contractor or licensed electrical contractor. Id.

One year prior to filing this petition, PSE&G implemented several new appliance service offerings in 2011 without formally petitioning the Board for approval, and

without providing notice to Rate Counsel. RA-1, p. 16. These new offerings include WorryFree Contracts for: tankless water heaters, premier coverage gas boiler contracts, and elite range, elite wall oven, elite cooktop, elite refrigerator, and elite dishwasher. RA-4, p. 2. Rather than a formal petition, PSE&G filed a letter notice with the Board pursuant to N.J.A.C. 14:4-3.6(u). At that time, Rate Counsel was unaware that PSE&G was implementing these new offerings.

A pre-hearing conference in this matter was held before Judge Cookson on July 23, 2012. Judge Cookson issued a Case Management Order on July 24, 2012. Rate Counsel filed a Motion for Partial Summary Decision on November 9, 2012, seeking dismissal of PSE&G's proposed Home Sewer, Water, Plumbing and Electrical Plans, and PSE&G's proposal to install new mini-splits.<sup>1</sup> In that motion, Rate Counsel argued that these proposals did not meet the threshold statutory requirement for new competitive services set forth in EDECA. PSE&G filed its reply to Rate Counsel's motion on November 30, 2012. Rate Counsel filed its response to this reply on December 14, 2012. Judge Cookson issued an order denying Rate Counsel's motion on December 18, 2012. In this order, Judge Cookson stated that a factual record must be developed before deciding "how the proposed services are related to the safety and reliability of utility businesses or are substantially similar to competitive services previously approved for PSE&G or other New Jersey gas or electric utilities...." (emphasis in original).

Rate Counsel filed its direct testimony of David Peterson (RA-1) on November 16, 2012. PSE&G filed rebuttal testimonies from Mr. Cardenas (P-4) and Mr. Swetz (P-5) on December 10, 2012. An evidentiary hearing was held before Judge Cookson on

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<sup>1</sup> When Rate Counsel filed this motion, Rate Counsel was not aware that PSE&G also is seeking to install new heat pumps. This information was not included in PSE&G's petition or pre-filed testimony. This proposal would have been part of Rate Counsel's motion if we had been aware of it at the time.

January 9, 2013. Mr. Peterson presented live surrebuttal testimony on behalf of Rate Counsel at the evidentiary hearing.

### III. ARGUMENT

#### **A. The New Services Proposed by PSE&G, With the Exception of WorryFree Contracts for Pool Heaters & Gas Grills, Do Not Fit Within Any of the Categories Set Forth in EDECA For Approval of New Competitive Services and Should Be Denied By Your Honor.**

EDECA limits the ability of a public utility to expand its competitive service offerings. EDECA requires any proposed expansion of competitive services by a gas utility to fit within one of five limited categories set forth in N.J.S.A. 48:3-58(b). This statute provides as follows:

Subject to the approval of the board pursuant to subsection a. of this section, a gas public utility or a related competitive business segment of that gas public utility may provide the following competitive services:

(1) Metering, billing and related administrative services that are deemed competitive by the board pursuant to section 8 of this act;

(2) Services related to safety and reliability of utility businesses;

(3) Competitive services that have been offered by any electric public utility or gas public utility prior to January 1, 1993 or that have been approved by the board prior to the effective date of this act to be offered by any electric public utility or gas public utility. An gas public utility that has offered a competitive service since prior to January 1, 1993 or a competitive service that was approved by the board prior to the effective date of this act is not required to obtain board approval pursuant to subsection a. of this section for that service, but any gas public utility that has not offered a competitive service since prior to January 1, 1993 or has not received previous board approval for such a competitive service shall apply for approval pursuant to subsection a. of this section. Except as otherwise provided by this paragraph, a competitive service that is permitted pursuant to this paragraph shall be subject to all requirements of this act for competitive services and to any standards or other rules or regulations adopted pursuant to this act;

(4) Services that the board determines to be substantially similar to competitive services that are permitted under paragraph (3) of this subsection; and

(5) Competitive services to non-residential customers using existing utility employees and assets.

A public utility cannot expand its competitive services unless the proposed service fits into one of these five categories. Only PSE&G's proposed WorryFree contracts for gas grills and pool heaters meet this criteria. Rate Counsel maintains that PSE&G's proposed home protection plans for water, sewer, plumbing and electrical services, its proposals to replace existing mini-split systems and existing heat pumps, to install new mini-split systems and new heat pumps, and the proposed WorryFree contracts for mini-split systems and heat pumps, all fail to satisfy this threshold legal requirement.

**i. Categories (1), (3), and (5) of N.J.S.A. 48:3-58(b) Are Not Applicable to PSE&G's Petition.**

Categories (1), (3), and (5) are not applicable to the present proposals. Category (1) involves metering and billing services. Category (5) addresses competitive services to non-residential customers. Since none of PSE&G's proposals involve metering and billing, and they are proposed to be offered to residential customers, categories (1) and (5) can be eliminated. Category (3) is a "grandfathering" provision that permits competitive services offered by a regulated utility before January 1, 1993, or approved by the Board prior to the effective date of EDECA. N.J.A.C. 14:4-3.6(b)(3) states that only services offered by an electric and/or gas utility prior to January 1, 1993, or that the Board approved prior to February 9, 1999, can be grandfathered under category (3). Since all of PSE&G's proposed services are new, they do not qualify for this category.

**ii. PSE&G's Proposals Do Not Involve "Services Related to Safety and Reliability of Utility Businesses" under EDECA.**

Category (2) allows "services related to safety and reliability of utility businesses." N.J.S.A. 48:3-58(b)(2). This language should be interpreted to encompass

only services related to the safety and reliability of the infrastructure owned by PSE&G. Several principles of statutory construction support this interpretation.

First, our State Supreme Court has repeatedly stated that the best indication of Legislative intent is the plain language chosen by the Legislature. See, e.g., State v. Hudson, 209 N.J. 513, 529 (2012). These words should be given “their ordinary and accustomed meaning.” Id. If the plain language of the statute leads to a clear understanding, then the judicial inquiry ends without examining extrinsic sources. Id. Applying these principles, a plain reading of the statute cannot be interpreted to mean the safety and reliability of a customer’s home, or the appliances located within that home. If the Legislature had intended this category to apply to PSE&G’s proposals, then they would have chosen to use the language “safety and reliability of a customer’s home” or something similar. The Legislature did not choose to use this language, and it would be inappropriate to give this statute a broader interpretation than indicated by the plain language of the statute.

Moreover, if Your Honor wishes to look to extrinsic evidence, PSE&G’s proposals do not fit in this category because the Board has already determined which services are related to the safety of customers’ homes. In Re Public Service Electric & Gas Co., Docket Nos. GR91101574J & ER91111698J, Board Order dated January 27, 1994 (“Safety Services Order”, provided in exhibit RA-4, p. 121). In the Safety Services Order, the Board made a finding that sixteen services offered by PSE&G are “safety-related” and must be offered free of charge to customers. The Safety Services Order specifically states:

Additionally, the Board FINDS under its responsibility to insure that utilities provide safe and adequate service that it is important that the

Company be obliged to insure that safe service is available to its customers, and the customer not be deterred from seeking safety-related services. Accordingly, the Board HEREBY ORDERS that on all service calls, diagnostic time of fifteen (15) minutes plus associated travel time shall be free of charge. Furthermore, there shall be no charge for additional diagnostic or repair time if, after the diagnosis, it is determined that the work that is required is related to safety. After the first 15 minutes, a charge shall be imposed for diagnostic and repair services that are deemed to be non-safety related, at which time, the Company shall inform the customer that those types of chargeable services are also available from other entities.

Id. at p. 5 (RA-4, p. 125).

The Board spoke very clearly in the Safety Services Order. The Board determined that customers cannot be charged for services that are necessary to ensure the safety of customers and their homes. The Board made a specific finding of sixteen safety-related services. The language “services related to safety and reliability of utility businesses” cannot be interpreted to include any service related to safety inside a customer’s home because the Board has already determined what those safety-related services are, and that they must be offered free of charge. Your Honor should follow the Safety Services Order because it stands as current Board policy. If the Board wishes to change its policy, it is for the Board to make that determination.

A more reasonable interpretation of this statutory language is that the Legislature intended it to apply only to services involving the safety and reliability of PSE&G’s utility infrastructure. Instead, PSE&G seeks to interpret this category (2) extremely broadly, to include any competitive service that has even the most tenuous connection to the provision of any utility service, including water and sewer. The problem with this interpretation is that it renders the remainder of the statute meaningless. If category (2) is interpreted to allow PSE&G to essentially do anything, then the four other statutory

categories become superfluous and meaningless.<sup>2</sup> Such an interpretation runs contrary to the Legislature's choice to include the other four categories in the EDECA statute.

Statutory language should be interpreted to give meaning to the legislation as a whole.

Ramapo River Reserve Homeowners Ass'n v. Borough of Oakland, 186 N.J. 439, 450 (2006) (“We ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole.”) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005) (internal citation omitted)).

Finally, this language should not be interpreted to include any infrastructure pertaining to water or sewer service. EDECA as a whole only applies to gas and electric utilities. EDECA does not govern water and sewer utilities. If the Legislature had intended this section of EDECA to apply to water and sewer utilities, the Legislature would have specifically included that language.

If these proposals involved safety, PSE&G would have addressed them long ago. They don't. They involve maintenance of customers' homes and convenience to the customer, not safety and reliability of utility businesses. Accordingly, PSE&G's proposals do not fit into Category (2), and should not be approved.

**iii. With the Exception of WorryFree Contracts For Gas Grills and Pool Heaters, PSE&G's Proposals Are Not “Substantially Similar” to Competitive Services Offered Pre-EDECA.**

The final category for new competitive services in EDECA is category (4), “services that the Board determines to be substantially similar to competitive services that are permitted under paragraph (3) of this subsection.” N.J.S.A. 48:3-58(b)(4). This

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<sup>2</sup> Similarly, PSE&G appears to argue that these services are related to the reliability of their utility businesses. Clearly they are not.

category permits new competitive services that are “substantially similar” to services that were offered by any gas or electric utility or approved by the Board prior to the effective date of EDECA, which was February 9, 1999. N.J.A.C. 14:4-3.6(b)(3). Only two of PSE&G’s proposals fit in this category – the proposals to offer WorryFree contracts for gas grills and pool heaters. These two proposed offerings satisfy the “substantially similar” requirement because prior to EDECA, PSE&G was already performing repairs of gas grills and pool heaters.

The first part of the inquiry requires an examination of which competitive services were offered by gas and electric utilities, or approved by the Board, prior to the passage of EDECA. Although PSE&G contended at the hearings that New Jersey Natural Gas Company and South Jersey Gas Company provided competitive services prior to the passage of EDECA, PSE&G never presented any evidence at the hearings as to what those offerings were. T65:L6-9. PSE&G did provide a response to a transcript request, TR-1, listing some appliance services offered through regulated utilities that were subsequently move to non-regulated entities. The description of programs offered by South Jersey Gas Company, New Jersey Natural Gas Company, and Elizabethtown Gas Company is inadequate because it does not indicate which services were offered prior to February 9, 1999. For example, TR-1 states that South Jersey Gas offered repair and parts replacement “prior to 2004.” PSE&G, who bears the burden of proof in this matter, failed to specifically provide evidence of these gas utilities’ specific offerings pre-EDECA. In any event, offerings listed in the response appear similar to what PSE&G was offering pre-EDECA: appliance repair (ovens, cooktops, etc.), and parts replacement. Although PSE&G’s response hints that New Jersey and Elizabethtown Gas may have

offered electric air conditioning replacement, Rate Counsel reviewed the relevant Board Orders and this is not the case. See, e.g., I/M/O New Jersey Natural Gas Co. For Approval to Establish a Floor Price For Appliance Service Contract & Non-Contract Services & To Implement Three New Electrical Central Air Conditioning Services, BPU Docket No. GT99060394, Board Order dated March 27, 2000; I/M/O NUI Elizabethtown Gas Co. For Approval to Establish a Floor Price Hourly Rate For Appliance Service Contract & Non-Contract Services & To Implement New Electric Central Air Conditioning Services, BPU Docket No. GR00060385, Board Order dated August 15, 2001 (Orders attached as Exhibit A). These two Companies only offered repair and parts replacement on central air conditioners, not full replacement services. Even then, these services were not approved until after the effective date of EDECA. To summarize, prior to EDECA the gas utilities were offering appliance repair or parts replacement, similar to PSE&G's offerings at that time. They were not providing the services that are the subject of this petition.

PSE&G's response does provide detail about a "Conditioned Power Service Program" ("CPSP") offered by Jersey Central Power & Light beginning in 1993. A review of that Board Order indicates that the CPSP is totally different from PSE&G's proposals. I/M/O Jersey Central Power & Light For Authorization to Implement a Conditioned Power Service Program & For Approval & Acceptance of Tariff Revisions Related Thereto, Docket No. ET92040380, Board Order dated October 19, 1993 (attached as Exhibit B). None of the offerings in the CPSP can be found to be "substantially similar" to PSE&G's proposals. The CPSP offered "various services and equipment to assist customers in protecting sensitive electronic equipment from power

disturbances” arising from “fluctuations or spikes in voltage levels.” Id. at 1. For residential customers, these offerings included installation of a meter socket device in tandem with individual surge suppressors which plugged into wall outlets. Id. at 2. Currently, this program is no longer offered to new customers, presumably because the demand has decreased as customers purchase individual power surge strips. The CPSP is very different from PSE&G’s proposed offerings. The most significant difference is that the CPSP was a device to protect from voltage surges caused by JCP&L’s own distribution infrastructure. The CPSP was intended to mitigate problems caused by JCP&L’s regulated utility business. PSE&G’s proposals, in contrast, involve customer’s maintenance of their own homes. None of PSE&G’s proposals address problems arising from PSE&G’s distribution of gas or electricity to customer’s homes. PSE&G’s proposals are totally different from the CPSP. The response to the transcript request TR-1 is the most detailed evidence PSE&G presented regarding services offered by other utilities pre-EDECA. With the exception of the CPSP, these services parallel PSE&G’s pre-EDECA offerings.

The inquiry also requires examination of PSE&G’s pre-EDECA services. The following services were offered by PSE&G, or approved by the Board for PSE&G, prior to EDECA (collectively, the “grandfathered services”):<sup>3</sup>

1. WorryFree contracts for repair (or parts replacement) of the following appliances:

residential contracts for central house heaters, water heaters, clothes dryers, ranges, wall ovens, cooktops, Central air conditioners, refrigerators, dishwashers, washing machines; small commercial contracts for heaters, central A/C, and water heaters.

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<sup>3</sup> See RA-4.

2. Maintenance Services: Central A/C start-up program, central heating and water heating tune-up.

3. Appliance Repair: Gas House heaters, gas water heaters, gas and electric ranges, gas and electric wall ovens, gas and electric cooktops, gas and electric space heaters and piping, gas clothes dryer, gas fireplace, gas pool heaters, outdoor gas grills, outdoor lighting, Electric central A/C, refrigerators, dishwashers, washing machines.

4. Replacement Services: Water Heater replacement.

Based on this list, PSE&G's proposals to offer WorryFree contracts for repair of gas grills and gas pool heaters appear to satisfy the "substantially similar" requirement because prior to EDECA, PSE&G already offered repair of gas grills and pool heaters.

**a. The Proposed Home System Protection Plans Are Not "Substantially Similar" to the Grandfathered Services, and Should Be Denied.**

The home system protection plans in the current filing are totally unrelated to the grandfathered services. The water line, sewer line, and plumbing protection plans don't even involve gas or electric service. These proposals involve water and sewer service only. Indeed, they are totally unrelated to PSE&G's core business, which is the transmission and distribution of gas and electric service. All of the grandfathered services involve either gas-powered or electric-powered appliances, connecting these offerings to PSE&G's core utility business. These three proposals do not have this connection. Furthermore, the statute requires new competitive services to be "substantially similar" to grandfathered services of gas or electric utilities, not grandfathered services offered by water or sewer utilities. The Legislature could have

chosen to specifically include competitive services offered by water or sewer utilities, but did not.

PSE&G's claim that water lines and sewer lines are "substantially similar" to gas or electric appliances is unreasonable. Following the logic of PSE&G's argument, if PSE&G is allowed to offer water and sewer line repairs, then New Jersey American Water Company should be allowed to repair telephones. While this example may seem absurd, it is no different than what PSE&G is proposing to do with water and sewer line repairs. Courts should avoid statutory interpretations which "lead to absurd or unreasonable results." State v. Lewis, 185 N.J. 363, 369 (2005) (quoting State v. Gill, 47 N.J. 441, 444 (1966)).

As a practical matter, PSE&G has no expertise in the areas of water and sewer service. PSE&G does not provide regulated water or sewer service, and Mr. Cardenas testified that he has never been employed by a regulated water or sewer utility. T17:L11 – T18:L1 (1/9/13). Your Honor and the Board should not allow PSE&G to venture into new areas outside of its expertise, exposing ratepayers to increased financial risk in the process.

Furthermore, with the exception of water heater replacement, PSE&G used its own unionized workforce to handle the grandfathered services. In contrast, PSE&G does not have the internal resources to perform any of the home protection plans, not even the proposed electrical system protection plan. These offerings may require the use of licensed plumbing and/or electrical contractors. PSE&G is not and has never been a licensed plumbing or electrical contractor, and does not intend to become one. Instead, PSE&G intends to contract out this work to licensed sub-contractors. Ratepayers will

never benefit from these offerings during major storms, because the work is not being performed by PSE&G's unionized workforce. PSE&G's only role will be that of an insurance salesman. PSE&G never had such a limited role in its grandfathered services. These proposals are not "substantially similar" to the grandfathered services and should be denied by Your Honor.

**b. The Proposals to Install New Heat Pumps and New Mini-splits Are Not "Substantially Similar" to the Grandfathered Services, and Should Be Denied.**

PSE&G's proposal to offer new installations of mini-split and heat pump heating/cooling systems is not "substantially similar" to any of the work it was performing prior to February 9, 1999. PSE&G's appliance service business has always involved servicing, repairing or replacing existing home appliances. New installations are of a very different nature. For example, the installation of a new mini-split in a home provides PSE&G with additional incremental revenues for its electric distribution utility; a repair or replacement of an existing appliance does not provide these incremental revenues.

PSE&G argues that these proposals are "substantially similar" because PSE&G presently offers new installations of central air conditioners and heaters. P-4, p. 4. This argument is flawed for several reasons. First, PSE&G's argument uses the wrong legal standard. PSE&G received Board approval to offer central air conditioner and heater replacement in 2002, well after the passage of EDECA. EDECA requires a proposed competitive service to be "substantially similar" to services offered or approved prior to February 9, 1999. Since PSE&G's central air conditioner and heater replacement

program was not approved by the Board until 2002, it cannot be used in an evaluation of the “substantially similar” standard set forth in EDECA.

Secondly, PSE&G revealed at the evidentiary hearing that even though it currently offers new installations of central air conditioners and heaters, PSE&G never petitioned the Board for approval of this service. The 2002 Board Order approving PSE&G’s central air conditioner replacement program shows the Board only contemplated central air conditioner replacement and heater replacement. For example, in the 2002 Board Order the Board stated:

PSE&G is proposing to offer both a turn-key Central Heater Replacement Program and a Central Air Conditioning Replacement Program by selling and installing a range of central heaters and central air conditioners in a variety of sizes and energy efficiencies within its service territory and statewide. The Company intends to utilize its gas distribution employee workforce for the installation of central heating and central air conditioning units, plus removal and disposal of the replaced units. [In Re Public Service Electric & Gas Co., BPU Docket No. EO98030146, Board Order dated March 22, 2002 (provided in RA-4, p. 5 of 130).]

The 2002 Board approval was limited to replacement of existing central air conditioners and central heating units. PSE&G apparently did not petition the Board for approval to offer new installations of these units. At the evidentiary hearing on January 9, 2013, Mr. Cardenas testified as follows:

Q. According to this chart, in what year did PSE&G begin offering central air conditioning and central heating replacement?

A. 2002.

Q. Okay. Thank you. And can you tell us what year PSE&G started doing new installations or, to use your language, upgrades to central air conditioning?

A. I don't have that information.

Q. So you don't know.

A. I don't know.

Q. Let me refer you to a Board order. Your Honor, the Board order starts on page 4 of 130 in response to this discovery response, RCR-19? [sic]

THE COURT: Okay. 2002. March 22nd?

MS. JUAREZ: Yes, March 22nd, 2002.

Q. Now, Mr. Cardenas, this is the Board order approving the company's proposed central air conditioning replacement, and I would like to refer you to the highlighted portion of the Board order on page 5 of 130, and I would like to ask you to read the highlighted portion out loud once you're done reading it to yourself.

A. "PSE&G is proposing to offer both a turn-key Central Heater Replacement Program and a Central Air Conditioning Replacement Program by selling and installing a range of central heaters and central air conditioners in a variety of sizes and energy efficiencies within its service territory and statewide. The company intends to utilize its gas distribution employees [sic] workforce for the installation of central heating and central air conditioning units, plus removal and disposal of the replaced units."

Q. Thank you very much. So my question is: Did PSE&G file a subsequent petition with the BPU seeking Board approval to offer new installations, rather than replacements?

A. I do not know if [sic] an order other than this where we have requested that.

[T40:L17 – T42:L5 (1/9/13).]

It appears that PSE&G does not have Board approval to install new central air conditioners or new heating units. Therefore, PSE&G cannot argue that new mini-split and heat pump installations should be allowed because PSE&G is already installing new central air conditioners. New installations of these units have never been sanctioned by the Board. Rate Counsel recommends that PSE&G's request to perform new installations of mini-splits and heat pumps should be denied. In fact, Your Honor should recommend that the Board determine whether PSE&G can continue performing new installations of central air conditioners and heaters, since it is currently doing so without Board authority. PSE&G receives incremental revenues from additional gas and/or electrical distribution sales when new air conditioners and new heating units are installed, in addition to the appliance service revenues received by performing the installation. The Board has never determined (1) whether PSE&G should even be in the business of performing new installations like a general HVAC contractor, and (2) if so, whether ratepayers should

receive some sharing of this double benefit of additional revenues. Your Honor should recommend that the Board investigate these questions.

**c. Consistent With EDECA’s Intention to Limit Expansion of Competitive Services, This Statutory Language Should Be Interpreted to Prohibit Expansion Into New Appliances Such As Heat Pumps and Mini-splits.**

Finally, PSE&G proposes to replace existing heat pumps and existing mini-splits, and to offer WorryFree contracts on heat pumps and mini-splits. Your Honor should deny all four of these requests because they are not “substantially similar” to PSE&G’s offerings prior to EDECA. Before the passage of EDECA, PSE&G’s appliance service business never involved any type of work on heat pumps and/or mini-splits. In fact, PSE&G did not offer any type of HVAC replacement prior to EDECA. EDECA requires a new competitive service to be “substantially similar” to a grandfathered service, not simply “similar.” This onerous requirement demonstrates the Legislature’s intention to limit the ability of a regulated gas or electric utility to expand its competitive offerings. Rate Counsel believes the “substantially similar” language should be interpreted narrowly, consistent with the Legislature’s intention. PSE&G should not be allowed to expand its offerings to new appliances, such as heat pumps and mini-splits, that were never part of PSE&G’s appliance business prior to EDECA. If the Legislature had intended to give PSE&G broad discretion to expand its appliance service offerings, the Legislature would have chosen more permissive language. The Legislature chose not to do so, and its intent should be followed by denying PSE&G’s proposals to replace mini-splits and heat pumps, and to offer WorryFree contracts for those items. Rate Counsel recommends that approval be limited to PSE&G’s proposals to offer WorryFree contracts

for gas grills and gas pool heaters, since prior to EDECA PSE&G already offered repair of these items.

**iv. Your Honor Should Direct PSE&G To Copy Rate Counsel On All Future Petitions and Notices Filed With the Board Regarding Any New Appliance Service Offerings.**

As Mr. Peterson testified, PSE&G implemented new appliance service offerings in 2011 without formally petitioning the Board for approval, and without providing notice to Rate Counsel. RA-1, p. 16. These new offerings included WorryFree Contracts for: tankless water heaters, premier coverage gas boiler contracts, and elite range, elite wall oven, elite cooktop, elite refrigerator, and elite dishwasher. RA-4, p. 2. Rather than a formal petition, PSE&G filed a letter notice with the Board pursuant to N.J.A.C. 14:4-3.6(u). This regulation allows a public utility to “make modifications to the pricing terms or other terms and conditions of a competitive product” by letter notice “subsequent to the initial approval by the Board.” N.J.A.C. 14:4-3.6(u). Rate Counsel believes that PSE&G’s decision to implement the 2011 offerings by letter notice was legally questionable, particularly the tankless water heater WorryFree contract. While PSE&G is permitted to modify pricing terms by letter notice, the regulations only allow this once a utility receives Board approval for a new offering. Tankless water heaters differ from traditional water heaters in price and technical requirements. Rate Counsel believes that the tankless water heater WorryFree Contract was a new offering, not a price modification, and PSE&G should have filed a formal petition with the Board. However, Rate Counsel never had the opportunity to raise this issue, because PSE&G never copied Rate Counsel on its letter notice to the Board. Rate Counsel was totally unaware that PSE&G implemented these new programs. Rate Counsel should be given the

opportunity to evaluate whether a proposed offering is really a term modification, appropriately implemented by letter notice under N.J.A.C. 14:4-3.6(u), or a new competitive service that requires Board approval. Rate Counsel requests that Your Honor direct PSE&G to copy Rate Counsel on any and all future petitions and letter notices pertaining to appliance services that PSE&G files with the Board.

**B. As a Matter of Public Policy, PSE&G's Appliance Service Business Should Not Be Expanded Beyond Approval to Offer WorryFree Contracts for Pool Heaters and Gas Grills, Because of The Competitive Advantage Enjoyed by PSE&G.**

Even if a proposed appliance service fits into one of the statutory categories set forth in EDECA, Your Honor and the Board are not required to approve the proposal. EDECA gives Your Honor and the Board discretion in whether or not to approval new competitive services. As part of this discretion, Your Honor may consider various public policy reasons to limit the expansion of PSE&G's appliance service business.

PSE&G's appliance service competitors include small appliance repair businesses, big box stores like Sears, and private plumbers and electricians. Given its position as a regulated gas and electric utility, PSE&G enjoys an unparalleled advantage over these competitors. As New Jersey's largest electric and gas utility, PSE&G benefits from almost unlimited opportunities to market and sell its competitive services when responding to service calls received by the regulated utility. Many customers call PSE&G when they smell gas or are experiencing a lack of heat, for example. A technician from PSE&G responds and, as previously mentioned, diagnoses the problem as either safety-related or non safety-related. If the problem is a non-safety related competitive service, the PSE&G technician then has the opportunity to offer and market PSE&G's competitive services. In most cases the technician who responds to the service

call is also the same individual who would complete the competitive services work. Therefore, the customer's quickest option is usually to have the PSE&G technician perform the repair. Mr. Cardenas acknowledged this competitive advantage at the evidentiary hearing:

Q. Do a lot of your competitive service jobs come from -- come from customers calling, for example, no heat?

A. When there's a no heat call, we respond. And we look at the unit and see if there's an adjustment that is safety-related or a repair. We check whether the customer has a contract. If they have a contract, the activity would be covered under the contract. Let's say that it requires replacement. It's a cracked boiler which cannot be operated safely. We would at that point in time tell the customer there needs to be a replacement of the unit. You have the option to have any plumber do the work or we can do that work. That's the typical interaction between the technician and the customer.

THE COURT: So the answer to her question was yes, most of your competitive service work comes from a call that originates -- originally might have been safety-related or part of a regulated utility customer's concern.

MR. STERN: I didn't understand that as the question. Was that the question?

MS. JUAREZ: I was sort of curious how much comes from, yes, like calls for safety-related issues.

MR. STERN: Then you should clarify your answer.

THE WITNESS: Put it this way, we sent out mailers to all customers in our territory that say we provide this service. Not all the replacement or work that we do is associated with a safety call that came in that then generated work. There is a whole campaign, there's a whole mechanism for marketing the services.

Q. Thank you.

A. I don't know the percent of how much is generated one way versus the other.

Q. Let's go back to the boiler example. If a repair is needed, does the technician keep those parts in the truck?

A. The technician's truck has an inventory of parts for repairs. And in some cases the part has to be ordered.

Q. What if the customer chooses not to get their repair from you, do you turn off the gas or -- and leave? Turn off the gas to the boiler?

A. If there is a safety-related incident, we would advise the customer that there's a problem with your boiler, you should not operate it under the present condition. And this is very very important in flooding conditions because we have had, as a matter of fact, a very bad explosion during the

floods last year in Manville where a customer after having water in a boiler that did not function right decided to light it up himself and, unfortunately, the boiler blew up. If there's a safety-related incident, we would shut off the device, red-tag it, so that there would be an indication there's a safety problem with this device.

Q. And if the technician has the part available in his inventory in the truck, then the customer's quickest option is to get the repair from you. Correct?

A. Yes. We would be there at that time.

[T55:L22 – T58:L7 (1/9/13).]

Mr. Cardenas' testimony illustrates PSE&G's advantageous position in the appliance service marketplace. PSE&G's role as the largest gas and electric utility in New Jersey drives the success its appliance service business. A significant amount of PSE&G's competitive services work stems from calls from regulated customers. These service calls provide PSE&G with innumerable opportunities to market their appliance service business. As Mr. Cardenas acknowledged, once the PSE&G technician is inside the customer's home, the customer's quickest option for repair is usually for PSE&G to perform the work. As a gas and electric utility, PSE&G enjoys a tremendous advantage over any and all of its competitors.

Your Honor and the Board have the discretion to consider the effect that an expansion of PSE&G's appliance service business would have on PSE&G's competitors. This effect should be considered in conjunction with the purpose of EDECA. The intention of EDECA was to de-regulate the State's electric and natural gas utilities in order to "[l]ower the current high cost of energy" and "[p]lace greater reliance on competitive markets." N.J.S.A. 48:3-50(a)(1) and (a)(2). EDECA was intended to encourage competitive markets. Ironically, PSE&G's competitive service work does not encourage competition in the realm of appliance services. If anything, because of its advantageous position in the marketplace, PSE&G's appliance service business may

stymie competition. If PSE&G expands, becoming more and more dominant in the appliance service business, this may discourage new competitors from entering the marketplace and attempting to compete with PSE&G. As Your Honor noted during the evidentiary hearings, there are only a finite number of repairs, etc. needed in any given year. T78:L1 (1/9/13). Any appliance service work captured by PSE&G is taken away from PSE&G's competitors. Rate Counsel urges Your Honor to consider the intention of EDECA in acting on PSE&G's petition. The benefits to PSE&G's shareholders and ratepayers from its appliance service business should not be at the expense of forcing independent plumbers and electricians out of business, or discourage any potential competitors from entering the arena. Any expansion of PSE&G's appliance service business should be very limited.

**C. PSE&G Should be Required to Return Margins Earned from New Appliance Services to Ratepayers on a Concurrent Basis.**

Historically, margins earned from PSE&G's Appliance Service Business are considered only when base rates are set in the course of a base rate case proceeding under traditional cost-based rate of return regulation, where such margins are accounted for as a contribution to "above-the-line" utility income in the determination of the Company's revenue requirement. See T141:L11-T143:L25 (1/9/13); RA-1, pp. 13-16. However, while base rate cases are infrequent, PSE&G's Appliance Service Business continues to grow. In between base rate cases, incremental margin revenues accrue to the benefit of PSE&G's shareholders. At present, there is no rate mechanism to return such incremental margin revenue to ratepayers between base rate cases. As such, PSE&G's

ratepayers do not benefit from the incremental margin revenues earned by PSE&G between rate cases.

The amounts at issue are not insignificant in absolute or relative terms. For its proposed new services, PSE&G projects first year margin revenues totaling \$627,000, increasing to \$1.857 million in year three. TR-2. Meanwhile, PSE&G attributes \$28 million of its base rate revenues to its Appliance Service Business.<sup>4</sup> T142:L12-16(1/9/13). In year three, PSE&G's projected margin revenue of \$1.827 million for its new services amounts to an increase of over 6 percent over its base rate Appliance Service Business margin revenue of \$28 million. Unless ordered to do so by the Board, the timing of PSE&G's next base rate case is ultimately up to the Company. PSE&G argues that the incremental margins from its Appliance Service Business operate to mitigate the need for a base rate case. P-5, 5:15-19. Following PSE&G's reasoning, all else equal, incremental margins would operate to even further extend the time between base rate cases, thereby forestalling the receipt of benefits by ratepayers of incremental margin revenues. Yet, on the other hand, PSE&G undercuts its argument by minimizing the significance of the margin amounts, expressed as a portion of PSE&G's very large overall revenues. P-5, 3:23-4:5. Either way, unless there is some mechanism for returning incremental margins to ratepayers between rate cases, ratepayers lose.

Meanwhile, PSE&G's Appliance Service Business has grown since its last base rate case. Three new Appliance Service Business service contract products were added: (1) Premier Coverage Gas Boiler Contracts; (2) Tankless Water Heater Contracts; and (3) Elite Range, Wall Oven, Cooktop, Refrigeration and Dishwasher Contracts. RA-4, p. 2.

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<sup>4</sup> The revenue requirement for PSE&G's current gas base rates was resolved by a Stipulation which was approved by the Board, as memorialized in an Order dated July 9, 2010. See I/M/O PSE&G, BPU Dkt. No. GR09050422 (Decision and Order, July 9, 2010).

The proposed new services are also incremental to the services offered at the time of the last base rate case. T144:L4-8 (1/9/13). If approved, the proposed new services would add to the Company's Appliance Service Business margin revenues, as confirmed by the Company's projection of revenues. P-5, 3:21-23; TR-2. Yet, under the current rate treatment for Appliance Service Business margin revenue, between base rate cases, these increases in margin revenues would serve to benefit only PSE&G's shareholders.

The incremental margins at issue are distinct from the margin revenues considered in setting base rates and are distinct from other base rate-type revenues and expenses, such as base rates for gas distribution service. Mr. Peterson noted these distinctions and the need for special treatment of such incremental revenues in his sur-rebuttal testimony at hearing:

It's the company's position apparently that in between rate cases they're entitled to whatever savings or costs that result. Typically, that's the case. But also typically the normal model is that when you're in a test period, you have defined services that are provided. If the company sells more of those services in between rate cases, that's the incentive in cost based regulation, rate of return regulation. Sell more product. In between rate cases you keep the benefits.

But the difference here is these are not the product lines that were established in the last rate case. These are new products. So, therefore, if we had known of these products in the last rate case, we could have considered them in the ratemaking formula. We didn't know those products -- it calls for special treatment.

I'm a hundred percent behind the company on this one for services offered during the test period. These were services that were not offered during the test period so there's a good reason for specialized rate treatment in between rate cases on something like that. [T181:L19-T182:L10 (1/9/13)]

As Mr. Peterson noted, the incremental margin revenues at issue are not the result of base-rate cost savings or increased gas distribution service sales. For these reasons and those set forth below, Rate Counsel respectfully recommends that the incremental

margins attributable to new service offerings merit a rate mechanism which reflects these distinctions.

Ratepayers will not see any benefit from this incremental margin revenue until “if and when” PSE&G files its next base rate case. Therefore, Rate Counsel recommends that the Board implement a margin sharing mechanism if the Company is permitted to expand its Appliance Service Business offerings. More specifically, as set forth below, on a going forward basis margins from new Appliance Service Business services added since the Company’s current base rates were established should be returned to ratepayers on a concurrent basis, as recommend by Mr. Peterson. RA-1, pp. 15-16.

PSE&G operates its Appliance Service Business as part of its gas utility operations. As stated above, historically, margin revenues from its Appliance Service Business are treated as “above the line” revenue in a gas base rate case. However, other than precedent, there are no statutory or regulatory impediments to considering an alternative to such treatment.

While EDECA provides specific guidance as to how margin revenues from competitive services provided by electric public utilities or their related competitive service business units should be returned to ratepayers, EDECA is less specific about how such revenues should be returned to ratepayers in the case of gas utilities. See N.J.S.A. 48:3-55, N.J.S.A. 48:3-58. The relevant EDECA statute addressing gas competitive services is silent with respect to a mechanism to return margins to ratepayers, and focuses on defining permissible competitive services, protecting utility service quality, preventing cross-subsidization, and protecting a competitive market. See N.J.S.A. 48:3-58.

EDECA specifies that a portion of net margin revenues from competitive services provided by electric public utilities or their related competitive service business unit are required to be returned to ratepayers through an offset to distribution rates or through the Market Transition Charge. Rate Counsel notes that the electric Market Transition Charge is a clause-type mechanism, subject to periodic true-ups, in contrast to the traditional base rate case mechanism for returning margins to gas ratepayers. See RA-1, pp. 15-16. The portion of margin revenues to be returned to ratepayers is set at 50 percent of net revenues when competitive services are provided by utilizing electric public utility assets, with a limited exception for certain contractual arrangements, and 25 percent of net revenues from competitive services provided by a separate business unit without using electric public utility employees and assets. See N.J.S.A. 48:3-55(b)(1). The pertinent regulations governing the treatment of electric competitive service revenues are similarly specific. See N.J.A.C. 14:4-3.6(r)(2), (3).

In contrast to the regulations governing such revenues for electric utilities, the regulations governing the treatment of such revenues for gas utilities are less specific. The regulations provide general guidance for the accounting treatment of gross revenues from the provision of a competitive product or service by all public utilities:

The level of gross revenues representing the fully allocated cost of providing the service shall be recorded in the respective competitive service revenue account and treated above-the-line for ratemaking purposes and credited to ratepayers.... [N.J.A.C. 14:4-3.6(r)(1)]

The regulations governing the rate treatment of margins from competitive services provided by gas public utilities such as PSE&G's Appliance Service Business are less specific than those for electric utilities:<sup>5</sup>

For gas public utilities, the total margins shall be treated above-the-line for ratemaking purposes and credited to ratepayers. [N.J.A.C. 14:4-3.6(r)(4)]

In sum, the pertinent statute and regulations do not prohibit the concurrent return of margins to gas ratepayers. Given the growth of PSE&G's Appliance Service Business since its last base rate case, Rate Counsel respectfully submits that the net margins from new service offerings initiated subsequent to PSE&G's last base rate case should be credited to ratepayers on a going forward basis through a clause-type mechanism.<sup>6</sup> As such, the margins would be treated above the line for clause accounting,

**D. PSE&G Should Monitor Its Hourly Charge Reports and Adjust its Hourly Rate if Needed.**

Of particular concern to Rate Counsel is the prevention of cross-subsidization of the Appliance Service Business by PSE&G's gas utility ratepayers. One item which could materially affect whether ratepayers are subsidizing the Appliance Service Business is the hourly labor rate attributable to gas utility employees working on Appliance Service Business calls. EDECA requires PSE&G to price its Appliance Service Business services at not less than its fully-allocated cost:

The price that a gas public utility charges for a competitive service shall not be less than the fully allocated cost of providing such service, as

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<sup>5</sup> The regulations define "total margins" as the difference between the total revenues received and the total expenses, in contrast to "net revenues" which are defined by the regulations as the difference between total revenues and dedicated expenses. See N.J.A.C. 14:4-3.6(n)(8),(9).

<sup>6</sup> For purposes of Rate Counsel's recommended treatment of net margin revenues, net margins should be considered net revenues, defined as the difference between total revenue and dedicated expenses, and applied in a manner that does not double-count relevant expenses.

determined by the board, which cost shall include an allocation of the cost of all equipment, vehicles, labor, related fringe benefits and overheads, and administration utilized, and all other assets utilized and costs incurred, directly or indirectly, in providing such competitive service. [N.J.S.A. 48:3-58(d)(2)].

Presently, in accordance with Board regulations, PSE&G updates its hourly rate on a semi-annual basis.<sup>7</sup> However, a recent competitive services audit report noted that the increase in the March 1, 2010 hourly labor rate to \$230 represented a 21 percent increase in the previously established rate.<sup>8</sup> Prior to then, a \$190 per hour labor rate was in effect since March 6, 2008. In its audit report, Overland Consulting (“Overland”) recommended that PSE&G “monitor” its fully allocated cost per hour on a more frequent basis (e.g. monthly or quarterly) to ensure that the floor price included in the Company’s tariff for appliance services covers the fully allocated cost of providing appliance services, thereby ensuring continual compliance with the EDECA standards.<sup>9</sup> As noted by Mr. Peterson, “the fact that PSE&G’s labor costs rose significantly in a relatively short period of time (21 percent in two years) and not addressed in PSE&G’s semi-annual filings supports the reasonableness of Overland’s recommendation.” RA-1, 17:16-18. Furthermore, the Board imposed an affirmative duty on public utilities to ensure that its prices equal or exceed its fully-allocated cost of providing such competitive services:

Each electric and/or gas public utility is responsible for and has an ongoing obligation to track, monitor and update, as necessary, its fully allocated cost of providing each competitive product and/or service offering by itself or its related competitive business segment, and to ensure that the price it or its related competitive business segment charges for each such competitive product and/or service at all times equals or exceeds the fully allocated cost of providing such competitive products

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<sup>7</sup> P-5, 6:23-7:3; See N.J.A.C. 14:4-3.6 (n), (o), and (p).

<sup>8</sup> See RA-1, pp. 16-18.

<sup>9</sup> See RA-9, excerpt from the Overland Consulting Audit Report (January 2012), BPU Dkt. No. EA09040305, Chapter 4 Recommendation 1, p. 4-2. The audit proceeding is pending before the Board.

and/or services and to file the notification required by (t) and (u) below.  
[N.J.A.C. 14:4-3.6(j)]

In accordance with this affirmative duty, PSE&G should be required to file the necessary application for an hourly rate change if its monitoring shows an increase in the fully-allocated hourly rate. This would help ensure that ratepayers are not subsidizing the Company's Appliance Service Business.

### **CONCLUSION**

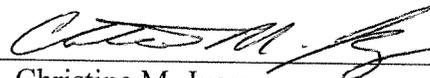
For all of the above reasons, Rate Counsel respectfully submits that Your Honor find:

1. With the exception of WorryFree Contracts for gas grills and pool heaters, PSE&G's petition should be denied as a matter of law.
2. The Board should investigate whether or not PSE&G should be allowed to continue performing these new installations of central air conditioners and central heaters.
3. PSE&G should be explicitly directed to copy Rate Counsel on all future petitions and notices filed with the Board regarding any new appliance service offerings
4. If PSE&G is permitted to expand its Appliance Service Business offerings, the incremental net margin revenues from new Appliance Service Business offerings added since the Company's current base rates were established should be returned to ratepayers going forward on a concurrent basis through a clause-type mechanism.

5. An explicit affirmative duty should be placed on PSE&G to monitor its fully-allocated labor rate and to file the necessary application for an hourly rate change if its monitoring shows an increase in its fully-allocated hourly labor rate.

Respectfully submitted,

STEFANIE A. BRAND  
DIRECTOR, RATE COUNSEL

By:   
Christine M. Juarez  
Assistant Deputy Rate Counsel

February 8, 2013

# **EXHIBIT A**



*State of New Jersey*  
**Board of Public Utilities**  
 Two Gateway Center  
 Newark, NJ 07102

IN THE MATTER OF THE PETITION OF )  
 NEW JERSEY NATURAL GAS COMPANY )  
 FOR APPROVAL TO ESTABLISH A FLOOR )  
 PRICE FOR APPLIANCE SERVICE )  
 CONTRACT AND NON-CONTRACT )  
 SERVICES AND TO IMPLEMENT THREE )  
 NEW ELECTRIC CENTRAL AIR )  
 CONDITIONING SERVICES )

DECISION AND ORDER

DOCKET NO. GT99060394

(SERVICE LIST ATTACHED)

BY THE BOARD:

On June 17, 1999, New Jersey Natural Gas Company ("NJNG" or "Company") filed a petition with the Board of Public Utilities (Board) for approval, pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("EDECA" or "Act"): (1) to establish a floor price for existing contract and non-contract appliance service offerings; (2) to implement three new electric central air conditioning repair services ("Appliance Service electric central air conditioning repair," "Air Conditioning Tune-up Service" and "Air Conditioning Contract"); and (3) for confidential treatment of the floor price calculation and the pro forma revenues and expenses of the new service offerings. In the event the Board required more time to review the proposed new electric air conditioning services, NJNG alternatively requested the Board's immediate approval of a floor price for existing appliance service programs, pending a determination of the proposed electric air conditioning and contract offerings.

On June 30, 1999, NJNG filed an amendment and supplement to its petition, requesting the establishment of a floor price for the existing "Additional Furnace" feature of its Protection Plan and Protection Plan Plus contracts and to implement an "Additional Air Conditioning" feature for its Protection Plan contract, which services the Company maintains were inadvertently omitted from the original petition. The Company also requested confidential treatment of its workpapers relating to the floor price calculation and floor price comparison.

## **BACKGROUND**

At the time of filing the instant petition, and the subsequent amendment and supplement thereto, NJNG served its residential customers' appliances through three non-safety and non-emergency related programs, all of which have been previously approved by the Board as competitive services. The following is a brief description of the services.

### **Non-Contract Services**

This program is for non-contract requests for appliance service under which the customer is charged either a flat fee or an hourly fee per call. Under this program, NJNG offers the following services: "Appliance Service"; "Pre-Season Heating Service"; and "House Heater Cleaning Service".

### **Appliance Service Contract**

Under this program, a customer may choose one or two plans, either the "Protection Plan" or "Protection Plan Plus", pay an annual service charge and receive service and parts if the appliances covered under the plan need repair during the year. The Protection Plan offers coverage on natural gas house heaters, water heaters, or both, with an annual charge for each option, regardless of whether service to the covered appliances is rendered during the year. The Protection Plus Plan includes all the features of the Protection Plan plus an annual inspection of the equipment covered. Limited parts are included under both of these plans.

### **Cool Summer Savings Plan**

This plan was approved by the Board on an interim basis as a pilot program. The plan offered electric central air conditioning repair service through a referral network of qualified heating, ventilation and air conditioning contractors. The customer paid a sixteen-month service charge for preferred service, free diagnosis of repair problems and a ten percent discount off the repair bill, excluding taxes. Subsequent to implementing this plan, NJNG advised the Board, by letter dated April 28, 1999, that the Company would not be expanding the plan, but would only service existing contracts until they expired through September 30, 1999. Thus, this plan has now expired.

### **Company Proposal**

NJNG asserts that its request for permission to expand its appliance service program to include the service and repair of electric air conditioners both as contract and non-contract jobs is substantially similar to the Board-approved services provided by the Company under its Cool Summer Savings program and services provided by Public Service

Electric and Gas Company and South Jersey Gas Company prior to the effective date of the Act. NJNG further argues that numerous vendors exist throughout New Jersey from whom customers may purchase comparable services, and that the Company's proposed service and price are competitive with the services and prices offered by those vendors.

NJNG further asserts that the proposed floor prices of its services, including the new electric central air conditioning services, are at or above the fully allocated cost to provide the services to customers and are not subsidized by the Company's regulated customer services. The Company maintains that its pro forma income statements demonstrate that the proposed prices will recover in excess of the costs of providing these services. The Company also maintains that its competitive service offerings will not adversely impact its ability to offer its non-competitive services to customers in a safe, adequate and proper manner.

NJNG proposes to establish a floor price for its residential contract and non-contract appliance services, including its proposed new electric central air conditioning services, which floor price shall not be less than the fully allocated cost of providing such services. The Company has provided calculations containing the derivation of the hourly rate floor price, including the expenses for its appliance service activities for the twelve months ending December 31, 1998. The Company asserts that the expenses include the direct labor, fringe benefits, motor vehicle and travel expenses associated with the service technicians and supervisors, the costs to answer and dispatch telephone calls for service, and the administrative costs needed to support the activities. Based upon its total appliance service activity for 1998, the Company calculated an average cost per hour floor price of \$99.02. Parts for non-contract jobs are charged to customers at manufacturers' suggested retail prices.

Based upon the above calculations, the Company provided its proposed floor price for both contract and non-contract services. The floor price for contract services is based upon the average time per call and calls per contract. NJNG proposes no immediate change to rates for existing contract services. However, the Company is proposing to change its floor price for existing and proposed non-contract services upon receiving Board approval.

NJNG also proposes to offer its non-contract customers a twenty-seven percent (27%) discount price for service if a technician is already at the residence to service one appliance and the customer requests service for another appliance. The discount would be based upon the fact that, since the technician is already at the residence, there would be no additional travel, dispatch or customer inquiry costs, with the discounted service floor price reflecting the exclusion of these costs.

Finally, NJNG asserts that it should be permitted to modify its pricing, based upon market conditions, as long as the price exceeds the approved floor price. The Company states that it will maintain separate detailed accounting for revenues and expenses pertaining to its appliance service programs, and continue to file quarterly reports with the Board.

During its review of NJNG's petition, the Board Staff examined the various expense components comprising the average floor price calculation and discussions were held with the Company. As a result of said discussions, by its correspondence dated August 9, 1999, NJNG revised its average cost per hour floor price to \$101.37. As a result of this revision, the specific floor prices, plus sales tax when appropriate, for contract and non-contract services are proposed as follows:

Contract Services – Protection Plan

Combination House Heater and Water Heater	\$ 27.32
Combination House Heater and Water Heater – Senior	\$ 37.58
A/C Combination-House Heater, Water Heater and A/C	\$ 84.33
A/C Combination-House Heater, Water Heater and A/C – Senior	\$115.97
House Heater Only	\$ 31.86
House Heater Only – Senior	\$ 38.23
Electric A/C	\$ 44.69
Electric A/C – Senior	\$ 53.63
Water Heater Only	\$ 6.52
Each Additional Furnace	\$ 18.19
Each Additional Furnace – Senior	\$ 18.29
Each Additional A/C	\$ 56.77
Each Additional A/C – Senior	\$ 57.08

Contract Services-Protection Plan Plus

House Heater Plus	\$ 99.61
House Heater Plus – Senior	\$129.87
Combination Plus	\$110.98
Combination Plus – Senior	\$137.55
Each Additional Furnace Plus	\$ 67.66
Each Additional Furnace Plus – Senior	\$ 69.50
Each Additional Furnace and Water Heater Plus	\$ 74.93
Each Additional Furnace and Water Heater Plus – Senior	\$ 72.98

### Non-Contract Services

Appliance Service (per hour)	\$101.37
Pre-Season Heating Service (per job)	\$ 76.03
A/C Tune-Up (per job)	\$101.88
House Heater Cleaning Service (per job)	\$182.47

By its letter dated March 14, 2000, The Division of the Ratepayer Advocate (Advocate) asserts that the Board should not review this request in isolation, but, rather, to place it in context of larger competitive issues that the Board will examine in the future proceeding concerning the audit of competitive services required by the Act. The Advocate also recommends that the Board deny NJNG the ability to change its service prices at will. The Advocate also recommends that the Board should not approve this request until the required audit has been completed. Alternatively, the Advocate argues that if the Board decides to approve this request, the approval should be on an interim basis subject to later amendment or reversal in light of all the relevant issues of fair competition for these services, the standards for affiliate relations and accounting for these transactions. Lastly, the Advocate recommends that the Board withhold its decision on this request until the written order approving the interim affiliate relation standards has been issued and the interim regulations published.

### Discussion and Findings

In considering the Company's request, it is necessary to ensure that the proposed competitive service offerings comply with the EDECA, as it provides certain specific criteria for electric and gas utilities to provide competitive services. Among other provisions of the Act, subsection 10(b)(3), N.J.S.A. 48:3-58(b)(3) permits, subject to Board approval, an electric or gas public utility to provide competitive services that have been offered by any electric or gas public utility since prior to January 1, 1993, or that have been approved by the Board prior to the effective date of this act to be offered by any electric public utility or gas public utility.

Subsection 10(b)(4), N.J.S.A. 48:3-58(b)(4) also permits a gas public utility to provide, subject to Board approval services that are substantially similar to competitive services that are permitted under paragraph (3) of this subsection.

With respect to NJNG's request to expand its appliance services to include the service and repair of electric central air conditioners, the Board is satisfied that the proposed new programs are comparable to the services provided by Public Service Electric and Gas Company and South Jersey Gas Company prior to the effective date of the Act. Furthermore, we are satisfied that the proposed new programs are comparable to the

services offered by other non-utility vendors and that the Company's proposed services and prices are competitive with the services and prices offered by those vendors. We further **FIND** that the proposed service offerings meet the above criteria as set forth in the Act. Accordingly, pursuant to subsection 10(b)(4), N.J.S.A. 48:3-58(b)(4) of the Act, we **HEREBY APPROVE** the Company's proposed electric central air conditioning programs.

The Act allows the Board to approve a competitive service only upon a finding that the provisions of subsection 10(d), N.J.S.A. 48:3-58(d) are met. Subsection 10(d)(1) requires that:

the provision of a competitive service by a gas public utility shall not adversely impact the ability of the gas public utility to offer its non-competitive services to customers in a safe, adequate and proper manner, and in all instances where resources are jointly deployed by the utility to provide competitive and non-competitive services and resource constraints arise, the provision of non-competitive service shall receive a higher priority...

The Board is satisfied that the Company has taken measures to ensure that the provision of non-competitive services to the Company's customers will not be adversely affected by the provision of its contract and non-contract competitive services. We **HEREBY FIND** that there has been no identified dereliction of responsibility by NJNG to its regulated public utility responsibilities in the provision of previously approved competitive service offerings, and that the Company has demonstrated that it has been able to provide both competitive and non-competitive services by its service technicians without any degradation of service. Furthermore, we find that utility service should be enhanced by the Company's reorganization of its field operations, whereby one group of employees will be assigned exclusively to perform utility work, another group to respond to emergency calls, and the third group to perform competitive services work while remaining as backup workers for non-competitive services. The Board will continue to monitor these competitive activities to ensure that the requirements of N.J.S.A. 48:3-58(d) are met and that utility service quality is not adversely affected. This issue will also be examined as part of the independent audit described below.

Subsection 10(d)(2), N.J.S.A. 48:3-58 (d)(2) of the Act requires that the price that a gas public utility charges for a competitive service shall not be less than the fully allocated cost of providing such service, as determined by the board, which cost shall include an allocation of the cost of all equipment, vehicles, labor, related fringe benefits and overheads, and administration utilized, and all other assets utilized and costs incurred, directly or indirectly, in providing such competitive service. Having reviewed the record in this matter, the Board **HEREBY FINDS** that the proposed floor prices appear to be fair,

reasonable and above the fully allocated cost of providing existing and proposed contract and non-contract appliance services. We further note that the proposed charge for each tariff offering is significantly in excess of the proposed floor price. We additionally note that subsection 10(k) of EDECA, N.J.S.A. 48:3-58(k) requires the Board to adopt fair competition, affiliate relation, and accounting standards concerning the offering of competitive services, and the performance of periodic independent audits to ensure compliance with said standards. These standards were adopted by the Board at its February 16, 2000, agenda meeting, and released by Order dated March 15, 2000, in Docket No. EX99030182. Therefore, pursuant to subsection 10(d)(2), N.J.S.A. 48:3-58(d)(2), the Board **HEREBY APPROVES** NJNG's proposed floor prices for its existing and proposed contract and non-contract appliance services, as submitted, on an interim basis and subject to refund to the Company's ratepayers pending the results of an independent audit of the Company's records relating thereto. In addition, if the floor price for a competitive service changes for any reason, the Company shall timely submit revised calculations, for approval by the Board, demonstrating that the fully allocated cost of providing that competitive service remains above the floor price. The Board reserves its right to require the Company to demonstrate that the charge for any competitive service offering remains above the approved floor price.

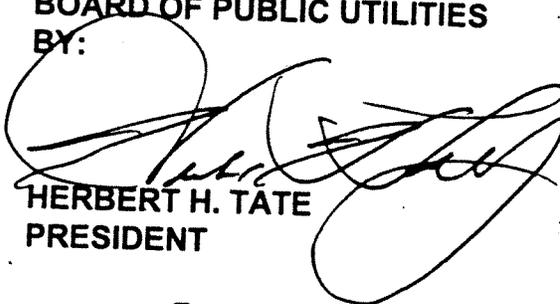
Section 10(d) N.J.S.A. 48:3-58(d), also provides that the Board may require that a gas public utility file and maintain tariffs for competitive services, which tariffs shall be subject to review and approval by the Board. The Board **FINDS** that the filing and timely maintenance of tariff sheets relating to the provision of all competitive services by all utilities is in the public interest. We therefore **HEREBY DIRECT** NJNG to provide tariffs for all approved competitive service offerings within ten (10) days of the date of this Order. Said tariff sheets shall contain, at a minimum, the date upon which each service offering was approved by this Board, the docket number under which said approval was made, a detailed description of the service offering including any limits of coverage, the approved floor price for each service offering, and the current charge for each service offering. If any change occurs to the current charge or limits of coverage, the Company shall file revised tariff sheets thirty (30) days prior to the effective date of said change. The Board notes that NJNG provided proposed tariff sheets in its petition, as revised by its letter dated August 9, 1999.

The Board has considered the Company's request for confidential treatment of its floor price calculations, related workpapers and pro forma revenues and expenses for the new service offerings. We are convinced that disclosure of this information could enable potential competitors to gain an unfair advantage, thereby undermining the Company's competitive position. We therefore **FIND** NJNG's request for confidential treatment to be reasonable and **HEREBY ORDER** that the aforementioned information be exempt from public disclosure.

The Company is directed to maintain separate detailed accounting for revenues and expenses for its appliance service programs. Furthermore, the Company shall continue to file its existing quarterly reports regarding its competitive service activities with the Board until such time as this requirement may change by a subsequent Board action.

DATED: 3/27/00

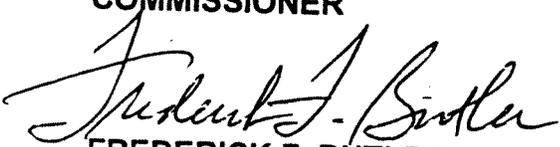
BOARD OF PUBLIC UTILITIES  
BY:



HERBERT H. TATE  
PRESIDENT



CARMEN J. ARMENTI  
COMMISSIONER



FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:   
EDWARD D. BESLOW  
ACTING SECRETARY

**SERVICE LIST**

Kevin Moss  
New Jersey Natural Gas Company  
PO Box 1464  
Wall, NJ 07719

Jacqueline Hardy, Esq.  
New Jersey Natural Gas Company  
PO Box 1464  
Wall, NJ 07719

George Riepe  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Alice Bator  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Jorge Nery  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Blossom Peretz  
Division of the Ratepayer Advocate  
PO Box 46005  
Newark, NJ 07101

Sarah Steindel  
Division of the Ratepayer Advocate  
PO Box 46005  
Newark, NJ 07101

Badrhn Ubushin  
Division of the Ratepayer Advocate  
PO Box 46005  
Newark, NJ 07101

R. William Potter, Esq.  
Potter & Dickson  
194 Nassau Street  
Princeton, NJ 08542

Norman Adelman  
Adelman Consulting  
19 Sweetmans Lane  
Manalapan, NJ 07726



Agenda Date: 8/15/01  
Agenda Item: 2C

STATE OF NEW JERSEY  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

AUG 29 2001

**ENERGY**

IN THE MATTER OF THE PETITION OF NUI )  
ELIZABETHTOWN GAS COMPANY FOR )  
APPROVAL TO ESTABLISH A FLOOR PRICE )  
HOURLY RATE FOR APPLIANCE SERVICE )  
CONTRACT AND NON-CONTRACT SERVICES )  
AND TO IMPLEMENT NEW ELECTRIC )  
CENTRAL AIR CONDITIONING SERVICES )

**DECISION AND ORDER**

**DOCKET NO. GR00060385**

(SERVICE LIST ATTACHED)

BY THE BOARD:

On June 9, 2000, NUI Elizabethtown Gas Company ("ETG" or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board") requesting permission, pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("EDECA" or "Act"): (1) to establish a floor price hourly rate for existing contract and non-contract appliance service offerings; (2) to implement new electric central air conditioning services; and (3) for confidential treatment of the proposed floor price hourly rate calculation and the pro forma revenues and expenses of the subject service offerings. The Company subsequently advised Staff that it is waiving its request for confidentiality.

ETG proposes to establish a floor price hourly rate for both its contract and non-contract appliance services and its proposed electric central air conditioning services. The Company contends that, consistent with N.J.S.A. 48:3-58, the proposed floor price hourly rate is not less than the fully allocated costs of providing such services. For all of its appliance service offerings, ETG may offer pricing based on market conditions, as long as the price exceeds the approved floor price hourly rate.

On September 6, 2000, Staff issued discovery questions, which were responded to by the Company on October 17, 2000. Copies of the Company's filing and responses to Staff's discovery questions were also provided to the Division of Ratepayer Advocate ("RPA") by ETG.

By letter dated January 25, 2001, the RPA advised the Board that it does not object to ETG's proposed rates for appliance contract and non-contract services and to the implementation of the new electric air conditioning services. However, the RPA asked that the Board examine the issue of structural separation of the competitive services from the utility upon the conclusion of the Board's audit of the Company.

On June 20, 2001, ETG responded in writing to additional Staff discovery requests. Copies of these additional discovery requests and the responses were also submitted to the RPA.

The Board's Audits Staff ("Audits Staff") has performed an Audit of Competitive Services Offerings and Affiliate Standards Compliance of Elizabethtown Gas Company, under Docket No. GA00040237 ("Competitive Services Audit"). The Audits Staff's findings and recommendations regarding the Competitive Services Audit are presently under review by the Board.

## DESCRIPTION OF ETG'S EXISTING APPLIANCE SERVICE PROGRAMS

ETG currently services its residential and commercial customers' appliances<sup>1</sup> through two non-safety and non-emergency-related service offerings, both of which have been previously approved by the Board, as competitive services. The following is a brief description of the existing Board-approved contract and non-contract competitive appliance services programs:

### 1) Non-contract Appliance Service Program

ETG's non-contract appliance service program is offered to customers, who do not have a service contract with the Company. The non-contract appliance service program includes the installation, replacement and repair of appliances and replacement of defective parts on certain appliances for residential and commercial customers, as well as maintenance and tune-up services, including inspection and tune-up of residential gas heating equipment and a house heat cleaning service during regular business hours. Customers are currently charged an hourly fee for these non-contract services. Customers may be quoted an estimated flat fee for these services. This flat fee is an estimate based upon the nature of the service call, the applicable hourly rate, the estimated time to complete the job and the cost of the parts. However, customers will be billed based upon the actual time spent plus applicable parts charges. When the job is completed, an itemized bill will be left with the customer, showing the calculation of the hourly retail price, each part replaced, and the cost of the parts. The customer may pay at that time. If not, a bill is mailed that will reflect a final amount due based upon the itemized bill left with the customer.

### 2) Annual Comfort Care Contract Programs

The Company's existing Comfort Care Program offers customers under contract with the Company a choice of two appliance service programs called the Comfort Care Program and the Comfort Care Program with Preventive Maintenance Check. The Comfort Care Program offers service and parts coverage on house heating equipment, water heaters, ranges, cook tops and ovens with an annual charge for each option. The Comfort Care Program with Preventative Maintenance Check includes all features of the Comfort Care Program plus an annual inspection of the customer's house heating equipment to ensure continued safe and efficient operation. Customer payment options for these two programs are either one full annual payment or consecutive equal monthly payments for either three (3) or twelve (12) months.

## COMPANY PROPOSAL

ETG seeks approval from the Board to establish a floor price hourly rate of \$105 for its contract and non-contract appliance services, and to expand its existing services by including new electric

<sup>1</sup> Appliances currently serviced include house heaters, hot water heaters, ranges, ovens, cook tops, and dryers, plus gas lights, gas grills, fireplace logs, and pool heaters.

central air conditioning services. The floor price hourly rate of \$105 would be applicable during regular business hours, Monday through Friday 7:30 am through 6:00 pm. A floor price hourly rate of \$126.07 would apply during non-regular business hours.

The Company contends that, consistent with EDECA, its floor price hourly rate will not be less than the fully allocated cost of providing such services and will not be subsidized by the Company's regulated customer services. The Company as part of its filing has provided the supporting calculations for the floor price hourly rate of \$105. ETG states in its filing that the floor price includes its actual annualized costs for equipment, vehicles, labor, communications, total wages and supervision, employee benefits and payroll taxes, transportation, fleet, administration, advertising and training.

The Company further indicates that the floor price hourly rate of \$105 during regular business hours is based upon the following floor rates for fractions of any hour: \$61 for the first 30 minutes and \$22 for each 15 minutes thereafter. For services to be performed outside of the Company's regular business hours, the floor price hourly rate of \$126.07 is based upon the following floor rates for fractions of any hour: \$73.29 for the first 30 minutes and \$26.39 for each subsequent 15 minutes.

The Company further proposes to expand its contract and non-contract existing services by including new electric central air conditioning services. This new appliance service program provides for electric central air conditioning repair and parts replacement. ETG will offer this service through its own technicians who have completed training for air conditioning repair services and hold the required certifications in refrigerant transition and recovery. Customers electing to enter into a service contract with the Company for this service will be charged a flat fee for the annual contract which includes specific parts, as defined in the tariff and have two payment options: either one full annual payment or equal consecutive monthly payments over either 3 or 12 months. Non-contract service customers will receive an itemized bill when the job is completed. The itemized bill will show the calculation of the hourly retail price, each part replaced, and the applicable cost of the parts. The customer may pay at the time service is completed. If not, a bill will be mailed that will reflect a final amount due based upon the itemized bill left with the customer. The equal consecutive monthly payment option will not be available to non-contract service customers.

The Company submitted proposed tariff sheets with its filing reflecting the floor price hourly rate and floor rates for fractions of any hour as discussed above and the proposed retail prices to be charged to customers for both its existing and expanded contract and non-contract appliance services. The Company indicates that the retail prices proposed to be charged to customers for these programs as shown in the tariffs are all greater than the proposed floor price hourly rates under each half hour increment. The proposed tariff sheets also include a detailed description of the service offering and coverage limits and placeholders for the docket number and approval date of this matter.

Further, according to the Company's pro forma statements of expected earnings, which were submitted with this filing, the Company expects that the contribution to earnings of its appliance service offerings will continue to increase for the following three (3) fiscal years of operation, 2002 to 2004. The pro forma statements of earnings show that the proposed retail prices charged to customers will not only recover the costs included in the calculation of the proposed floor price hourly rate, but will also fully recover any additional parts and merchandising, advertising or customer care costs.

## DISCUSSION AND FINDINGS

In considering ETG's proposals, it is necessary to ensure that the proposed competitive service offerings comply with the EDECA, which allows electric or gas utilities to provide competitive services subject to Board approval and subject to meeting certain criteria. Among other provisions of the Act, N.J.S.A. 48:3-58(b)(3) permits, subject to Board approval, an electric or gas public utility to provide competitive services that have been offered by any electric or gas public utility prior to January 1, 1993, or that have been approved by the Board prior to the effective date of the Act to be offered by any electric public utility or gas public utility. ETG's proposed new service offering is similar to services currently being provided by Public Service Electric and Gas Company and which have been approved by the Board prior to the effective date of the Act.

N.J.S.A. 48:3-58(b)(4) also permits a gas public utility to provide, subject to Board approval, services that are substantially similar to competitive services that are permitted under N.J.S.A. 48:3-58(b)(3).

The Act allows the Board to approve a competitive service only upon a finding that the provisions of N.J.S.A. 48:3-58(d) are met. N.J.S.A. 48:3-58(d) requires that:

the provision of a competitive service by a gas public utility shall not adversely impact the ability of the gas public utility to offer its non-competitive services to customers in a safe, adequate and proper manner, and in all instances where resources are jointly deployed by the utility to provide competitive and non-competitive services and resource constraints arise, the provision of non-competitive service shall receive a higher priority . . .

Based on its review of the Company's filing, the Board is satisfied that the Company has taken measures to ensure that the provision of non-competitive services to the Company's customers will not be adversely affected by the provision of its contract and non-contract competitive services. In response to one of Staff's discovery requests, ETG states that its service department was reorganized in May 1999 so as to fully separate the personnel focused on performing non-competitive utility response services from the personnel or Appliance Business technicians focused on appliance installation, replacement, repair and maintenance services for residential and commercial customers. While the focus of the Appliance Business technicians is appliance-related services, these personnel regularly perform certain non-emergency utility work such as meter turn on and off orders and meter changes, and are trained to support the Company's emergency response efforts. The Board is satisfied that functional separation of employees in this regard will allow ETG to respond more quickly to emergency and safety-related calls as well as other non-competitive-related inquiries, and will provide it with the ability to dispatch employees more effectively. The functional separation of employees further allows resources to be unconstrained so that safe, adequate and proper non-competitive service is provided to customers. Continued monitoring of the Company's response to emergency and safety-related and non-competitive calls and other service-related issues will be reviewed in periodic audits of competitive services as required by EDECA.

With respect to the Company's request to expand its contract and non-contract appliance service programs by including the electric central air conditioning repair and replacement services charged on an hourly fee per call basis or through a service contract option under the Comfort Care Program or Comfort Care Program with Preventative Maintenance Check, the Board FINDS, based upon its review of the Company's proposal, that the proposed service offerings meet the above criteria as set forth in the Act. Based upon this findings, the Board further HEREBY APPROVES the

Company's proposed new and expanded contract and non-contract appliance service programs.

N.J.S.A. 48:3-58(d)(2) requires that the price that a gas public utility charges for a competitive service shall not be less than the fully allocated cost of providing such service, as determined by the Board, which cost shall include an allocation of the cost of all equipment, vehicles, labor, related fringe benefits and overheads, and administration utilized, and all other assets utilized and costs incurred, directly or indirectly, in providing such competitive service. Having reviewed the record in this matter, the Board FINDS that the Company's proposed floor price hourly rate appears to include the fully allocated costs of providing services under the existing and proposed contract and non-contract appliance service programs, consistent with EDECA. The Board's role under EDECA is to set the minimum floor price, not the retail price for competitive services. The retail prices as proposed by the Company in its proposed tariffs appear to cover the fully allocated cost of providing such services, including the costs of tools and material used to complete the job. Continued monitoring of the floor prices to ensure that they cover the fully allocated cost of providing such services, including the costs of tools, materials and parts used to complete the job will be addressed as part of the periodic audits required by EDECA.

N.J.S.A. 48:3-58(k) requires the Board to adopt fair competition, affiliate relation, and accounting standards concerning the offering of competitive services, and the performance of periodic independent audits to ensure compliance with EDECA and those standards. These standards were adopted by the Board at its February 16, 2000 agenda meeting and released by Order dated March 15, 2000, in Docket No. EX99030182. The Board is currently reviewing the Competitive Services Audit for the Company, particularly, as it relates to the Company's proposed floor price hourly rate. Accordingly, pursuant to N.J.S.A. 48:3-58(d)(2) and N.J.S.A. 48:3-58(k), the Board HEREBY APPROVES the proposed floor price hourly rate on an interim basis, subject to change, in order to address any adjustments that may be required as a result of the Board's findings with respect to the Competitive Services Audit.

The Board HEREBY DIRECTS ETG to request and receive approval from the Board before making any changes to the floor rates, terms and conditions of these competitive services. Moreover, the Board will continue to monitor cost and expense data for these services as part of the periodic audits as required by EDECA and reserves its right to require the Company to demonstrate that the charge for any competitive service offering remains above the approved floor price.

N.J.S.A. 48:3-58(d) also provides that the Board may require that a gas public utility file and maintain tariffs for competitive services, which tariffs shall be subject to review and approval by the Board. Since the filing and timely maintenance of tariff sheets relating to the provision of all competitive services by all utilities is in the public interest, the Board HEREBY DIRECTS ETG to provide all final tariffs for all approved competitive service offerings within ten (10) days of the date of this Order. Tariff sheets shall contain, at a minimum, the date upon which each service offering was approved by this Board, the docket number under which the approval was made, a detailed description of the service offering, including any limits of coverage, the approved floor price for each service offering and the current charge for each service offering. If any Board-approved change occurs to the floor price or limits of coverage, the Company shall file revised tariff sheets thirty (30) days prior to the effective date of the change. The revised tariff sheets shall also include a list of all parts included in all of the competitive service offerings

With respect to the Company's request for confidential treatment of its floor price calculations and pro forma revenues and expenses for the subject service offerings, the Board notes that the Company has advised Staff that it has withdrawn its request for confidentiality so this issue is moot.

The Board HEREBY DIRECTS ETG to maintain a separate detailed accounting for revenues and expenses for its appliance service programs. Furthermore, the Company shall continue to file its existing quarterly reports regarding its competitive service activities with the Board until such time as this requirement may change by a subsequent Board action. These reports will be reviewed as part of the periodic audits required by EDECA.

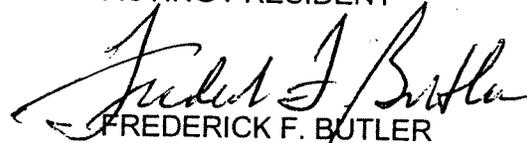
Finally, nothing is intended to exempt ETG from complying with all applicable laws and regulations with respect to the provisions of these above services, including obtaining any permits or licenses that may be required.

DATED: *August 15, 2001*

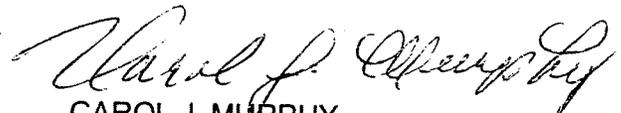
BOARD OF PUBLIC UTILITIES  
BY:



CONNIE O. HUGHES  
ACTING PRESIDENT



FREDERICK F. BUTLER  
COMMISSIONER



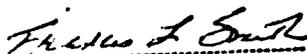
CAROL J. MURPHY  
COMMISSIONER

ATTEST:



FRANCES L. SMITH  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



Frances L. Smith, Esq.  
Secretary

IN THE MATTER OF THE PETITION OF NUI ELIZABETHTOWN GAS COMPANY FOR  
APPROVAL OF FLOOR PRICE HOURLY RATE FOR ITS APPLIANCE CONTRACT AND NON-  
CONTRACT SERVICES AND TO IMPLEMENT NEW ELECTRIC CENTRAL AIR CONDITIONING  
SERVICES

Docket No. GR00060385

SERVICE LIST

Frank Perrotti, Director  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Helene Wallenstein, DAG  
Department of Law and Public Safety,  
Division of Law  
P.O. Box 45029  
Newark, NJ 07102

George Riepe, Assistant Director  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Judith B. Appel, DRA  
Division of the Ratepayer Advocate  
31 Clinton Street - 11th Fl.  
P.O. Box 46005  
Newark, NJ 07101

Alice Bator, Bureau Chief  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Mary Patricia Keefe, Esq.  
NUI Elizabethtown Gas Company  
One Elizabethtown Plaza  
Union, NJ 07083

Michael Kammer  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Thomas E. Rumely  
Manager, Appliance Services  
NUI Corporation  
One Elizabethtown Plaza  
Union, NJ 07083

Jorge Nery  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Eloisa A. Flores  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

# **EXHIBIT B**



State of New Jersey  
Board of Regulatory Commissioners

CN 350  
Trenton, NJ 08625-0350

IN THE MATTER OF THE PETITION )  
OF JERSEY CENTRAL POWER AND )  
LIGHT COMPANY FOR )  
AUTHORIZATION TO IMPLEMENT A )  
CONDITIONED POWER SERVICE )  
PROGRAM AND FOR APPROVAL AND )  
ACCEPTANCE OF TARIFF REVISIONS )  
RELATED THERETO )

ORDER OF APPROVAL

DOCKET NO. ET92040380

(Service List Attached)

BY THE BOARD:

By letter dated April 2, 1992, Jersey Central Power and Light Company (JCP&L/or Company) filed a petition with the Board of Regulatory Commissioners (the Board) for authorization to implement a Conditioned Power Service (CPS) Program as a new service to JCP&L's customers and for approval and acceptance of proposed tariff revisions related thereto.

In its filing, JCP&L asserts that traditional electrical equipment such as motors, heaters and lighting have historically been able to tolerate fluctuations or spikes in voltage levels without adverse impacts on end users, or often without customers even being able to notice that such fluctuations occur. However, sensitive modern electric equipment such as computers, VCRs and digital clocks are generally designed with less tolerance of deviations in power supply, and can be adversely effected by millisecond fluctuations in voltage. Due to the increased use of sensitive electronic equipment and appliances, methods have been developed for conditioning power at the customer site in order that sensitive electronic equipment not be affected by various types of power disturbances. By its petition, JCP&L proposes to offer various services and equipment to assist customers in protecting sensitive electronic equipment from power disturbances. JCP&L asserts that these proposed products and services are new services which are not covered by any existing rates, fares or charges previously approved by the Board and, accordingly, the relief requested may be approved by the Board pursuant to N.J.S.A. 48:2-21.2(f)(c) without the finding of a rate base.

JCP&L proposes an optional power conditioning program for its residential, commercial and industrial customers. The program is called the Conditioned Power Service Program and consists of two components: (i) the Consumer Electronics Protection Program (CEP), and (ii) the Power Disturbance Protection Program (PDP).

Under the CEP Program, JCP&L will offer a multistage surge suppression service. This will include the installation of a meter socket device in tandem with individual surge suppressors which plug into wall outlets. For various stated reasons, JCP&L intends to use primarily its own personnel to perform the various services and installation of meter socket devices. The electrical outlet surge suppressors would be delivered directly to customers for their own installation. The program will also offer an option for back up power packages to provide uninterrupted power supply (UPS) during outages of a short duration. JCP&L expects that residential and small commercial customers will be the principal participants.

Under the PDP Program, JCP&L proposes to offer four distinct services:

- (1) Diagnostic Service which evaluates the nature of power disturbances at the customer's location;
- (2) Engineering and Design Service to design specific solutions to problems which are identified;
- (3) Turnkey Implementation Service which implements the engineering solution and tests the finished product to assure compliance with design objectives; and
- (4) Maintenance and Repair Service.

JCP&L expects that its large commercial and industrial customers will be the primary participants of this program. JCP&L further represents that it anticipates that other than for diagnostic services, which will be performed primarily by Company personnel, the bulk of the PDP services will be carried out by sub-contractors or otherwise through the use of contracted services.

By letter dated April 22, 1993, JCP&L filed modifications to its petition. The modifications primarily involve the proposed pricing which was changed to reflect updated cost estimates.

For the CEP Program JCP&L proposes charging customers a monthly rate of \$2.50 and \$3.75, respectively, for a single phase and three phase meter socket surge suppression device, and \$0.55 and \$0.65 per month, respectively, for a two outlet and four outlet electrical receptacle outlet surge suppresser. Monthly charges for uninterruptible power supply range from \$19.25 to \$28.75. Charges for the PDP Program will be calculated and billed on an individual basis. In no event, however, will the amount charged for the PDP program be less than actual costs.

JCP&L has provided extensive documentation concerning its cost assumptions used in developing the proposed charges. The documentation is also intended to demonstrate that the program is not subsidized by ratepayers.

The initial start up costs associated with the program have been amortized over five years with no return on the unrecovered balance. Also, in order to bring price stability to the program and otherwise foster the market for the program, JCP&L has requested that the prices in the tariff be fixed for five years. Thereafter, any changes in rates for the program will be established upon the filing by the Company of a revised CEP tariff with the Board.

For the initial five year period, JCP&L intends, for ratemaking purposes, to isolate all program revenues and expenses from the balance of its rates. If the program results in net losses, customers will have no responsibility to absorb such losses. All losses or gains associated with the program will be borne by JCP&L stockholders. After the initial five year start up period, subsequent changes to the program prices would be considered in a base rate case.

In its petition, JCP&L contends, among other things, that:

- (a) The Conditioned Power Service Program is reasonable, appropriate and in the public interest, and is responsive to an actual need as determined by the Board for enhanced quality service by many of the Company's customers;
- (b) The Conditioned Power Service Program constitutes utility "service" within the meaning of N.J.S.A. 48:2-21 and other applicable provisions of Title 48 of the New Jersey Revised Statutes, and that the Board has jurisdiction to review, approve, modify and actively supervise all aspects thereof;
- (c) The Company's proposed revisions to its existing tariff to implement both components of the Conditioned Power Service Program are reasonable, appropriate and in the public interest;
- (d) The Company's Conditioned Power Service Program, as structured, does not involve any cross-subsidization or pricing below cost, and the Board retains the right and authority to disapprove or modify any prices under the Program at any time based upon the Board's on-going, active supervision of the implementation of said Program.
- (e) The promotion and provision of services under the Conditioned Power Service Program by the Company is in the public interest because it will best facilitate the immediate, uniform and widespread availability of those services and equipment to

all customers, thereby promoting the Board's and the State of New Jersey's governmental interest in improving the adequacy and reliability of electric utility service.

- (f) The Company's use of its own personnel for installation of equipment and the provision of services under the Conditioned Power Service Program for reasons of cost, safety, quality assurance, uniformity and efficiency, is reasonable, appropriate and in the public interest.

Subsequent to the filing of the petition, Board Staff issued and JCP&L responded to various discovery requests. By letter dated February 10, 1993, the New Jersey State Council of Electrical Contractors (N.J.S.C.E.C.) notified the Board that it was working with JCP&L on modifications to its proposed conditioned power program.

In recognition of the potential impact of the proposed programs on private business interests, Board Staff chaired several conferences to discuss issues raised by the N.J.S.C.E.C. and to attempt to settle those issues. Numerous discussions were also conducted directly between JCP&L and the contractors. The meetings were also attended by representatives of the New Jersey Coalition for Fair Competition (Coalition). In addition to the interests of electrical contractors, the Coalition represented the interests of electrical equipment wholesalers and retailers, among others. Although significant progress was apparently made, the settlement discussions were ultimately unsuccessful.

At an April 22, 1993 meeting attended by Board Staff, JCP&L, N.J.S.C.E.C. and the Coalition, a schedule was agreed to for bringing this matter to the Board's agenda for decision. This schedule was confirmed by letter dated May 6, 1993 from Mr. Robert S. Chilton, Director of the Board's Division of Electric. Pursuant to the schedule, on June 11, 1993, both the Coalition and JCP&L filed written comments concerning the proposed program. On June 17, 1993, JCP&L filed a response to the Coalition's comments.

The Coalition requested that this matter be declared a contested proceeding, that it be granted intervenor status, and that evidentiary hearings be held. In addition, the Coalition raised several substantive issues concerning the proposed program summarized as follows:

- 1) The CPS program creates a conflict with JCP&L's duty to provide safe and adequate service, in that the increased frequency of momentary power interruptions and voltage surges would likely create an increased need and market for surge protection and interruption backup equipment. As such, deteriorating service quality by JCP&L could actually enhance its profitability.

2) The lease by JCP&L of surge suppressor and uninterruptible power supplies will directly impact the interest of catalog suppliers, retailers, distributors and manufacturers of similar equipment. The provision of engineering and design services by JCP&L personnel will affect the interests of licensed professional engineers. The installation of surge suppression equipment by JCP&L personnel will harm business opportunities of independent electrical contractors.

3) Utilities should incorporate independent, stand-alone subsidiaries to perform these types of competitive services in order to avoid the problems of segregating functions, duties, assets, personnel and accounting. In the alternative, JCP&L should merely inform customers about power conditioning and advise them that independent businesses can provide these services.

4) The liability disclaimers in the proposed tariffs should be eliminated, since independent businesses which provide similar services must stand behind their work.

5) The use of bill inserts to advertise these programs is inappropriate, since such "piggy-backing" onto existing utility costs provides an advantage to the utility on these competitive services.

6) Power conditioning does not constitute a public utility function, and the utility should not be permitted to engage in it, absent an extraordinary finding of necessity.

7) The five year levelized price plan for the CEP program can result in excessive profits to shareholders and thereby not represent just and reasonable rates. The program should only be adopted on a trial basis for a limited period of time.

8) The petition on its face does not support a finding that the service is either just and reasonable or in the public interest.

JCP&L asserts the petition and proposed programs are in direct response to the expressed needs of customers in light of the proliferation of more sophisticated electronic equipment. Further, the Company believes that it has undertaken significant effort to constructively address the trade group issues. In response to the issues raised by the Coalition, JCP&L stated that:

1) Introduction of the proposed program on a trial basis is unacceptable since it will unduly jeopardize the substantial up-front investment by shareholders should the program be discontinued in the future.

2) With respect to the cross-subsidization issue, current rates include none of the costs of the program and, as such, the costs of starting the program and all risk during implementation are being borne by shareholders. Also, the Company has developed detailed cost budgets and tracking mechanisms, established accounting procedures to segregate all revenues and expenses, and developed special work orders to separately track the program's financial results. Moreover, the contractors have not identified any specific facts which demonstrate that the proposed rate is subsidized.

3) The meter socket surge suppression device must be installed by JCP&L employees for reasons of both safety and economy. Third parties should not be permitted to work on the Company's meters.

4) Virtually all "hands-on" work related to the power disturbance protection program will be performed by licensed electrical contractors. As subcontractors, these firms will be procured through a competitive bidding process.

5) The proposed CPS program will stimulate general interest in power conditioning service and thereby expand the market for these services and produce incremental economic activity.

6) In order to increase the competitive base of licensed electric contractors to participate in the power disturbance protection program, the Company proposed providing logistical and technical support for power conditioning training, and recommended an independent certification for trained contractors.

7) Marketing via bill inserts is a useful and time-honored tool for making customers aware of the programs and should be permitted.

8) The Coalition's claims for an evidentiary hearing have no merit.

9) The Coalitions assertions of cross subsidization are unsubstantiated; and

10) The proposed program is a utility service which will assist in meeting the Company's mandate to provide safe, adequate and proper service.

#### **Discussion:**

The Coalition has requested that this petition be the subject of a full contested case evidentiary hearing before the Board and that it be permitted to intervene if the request for an evidentiary

hearing is granted. The Board disagrees that an evidentiary hearing is required. Notwithstanding that thirteen months of meetings and discovery have been conducted to date, the Coalition has not presented any genuine factual disputes. Further, the Coalition is not entitled to an evidentiary hearing on the petition because it does not have an interest at stake that would require such procedures. See High Horizons Dev. v. Dept. of Transp., 120 N.J. 40 (1990). In re Valley Hospital, 240 N.J. Super. 301, 312 (App. Div. 1990 Certif. den. 126 N.J. 318 (1991)).

Moreover, the Coalition has been given ample opportunity to be heard. It has been given the opportunity to submit comments and those comments have been carefully considered by the Board. See in re Solid Waste Utility Customer Lists, 106 N.J. 508, 519-21 (1987). Further, in future rate cases, the Coalition will have an opportunity to intervene and fully explore the issue of whether these services are appropriately priced.

Based on the above, the Board HEREBY DENIES the Coalition for Fair Competition's request that the petition be declared a contested case pursuant to the Administrative Procedure Act and the rules of the Office of Administrative Law and that an evidentiary hearing be held before the Board.

The Board has carefully reviewed and considered the comments of the Coalition regarding the potential impact of the entry of JCP&L into this type of service upon non-regulated competitors. Although this Board is sympathetic to many of the concerns raised, the Board of Regulatory Commissioners and its predecessor, the Board of Public Utilities, have long recognized that regulated utilities may engage in any reasonable legitimate business endeavors that are not directly or indirectly prohibited by law. Watkins v. Atlantic City Electric Company, 67 PUR 3d 483, 491 (N.J.B.P.U. 1967). The Board noted in that case that "management is not only permitted, but is under a duty so to manage the affairs of the utility that its actions will result in the provision of the best service at reasonable rates for the benefit of both its customers and its stockholders". Id. at 490.

In Superior Propane Company v. South Jersey Gas Company, 60 PUR 3d 217, 220 (N.J.B.P.U. 1965), the Board stated that it was without authority to consider the competitive effect upon vendors of bottled gas of the promotional activities and other operations of gas utilities under its jurisdiction, since it did not regulate those other vendors. Specifically, the Board found that utilities, while beneficiaries of the protective aspects of utility regulation, have corresponding obligations arising from this status. They are obligated, for example, to provide safe, adequate and proper service to the general public under applicable tariff provisions and standards prescribed by this Board. This is not the case with the nonregulated competitors, which are free from this type of regulation. They are free to choose their customers, charges, and

standards of service, subject to the practices of the market. They may cancel a customer or withdraw from business in a particular area without seeking permission to do so. Their obligations to the public are purely a matter of business judgment and individual conscience. Id. Thus, the Board found that not having been given by the legislature the power to regulate the vendors of bottled gas, it similarly has not been vested with the power to protect them from the hazards of competition. Id. at 221.

In addition, in an Order dated December 15, 1988, in Donnelley Directory, A Division of the Reuben H. Donnelley Corporation v. New Jersey Bell Telephone Company, BPU Dkt. No. TC87090798, the Board dismissed a complaint brought by a competitor of New Jersey Bell Telephone Company, on the grounds that it did not have jurisdiction over allegations of anti-competitive behavior raised by nonregulated competitors of a public utility.<sup>1</sup> Similarly, in 1989, the Appellate Division affirmed a September 27, 1989 Order of the Board, wherein the Board adopted an Initial Decision of the Administrative Law Judge, dismissing a complaint by a competitor for lack of standing and lack of subject matter jurisdiction by the Board. Coalition Against Unfair Utility Practices v. PSE&G, App. Div. Dkt No. A-1389-89T5, December 28, 1990, certif. den. 126 N.J.323 (1991).

Thus, with respect to the contentions of the Coalition regarding the impact of JCP&L's petition upon competitors, the Board FINDS that it lacks jurisdiction to consider these potential impacts.

Notwithstanding the above, however, N.J.S.A. 48:2-13 clearly vests in the Board broad jurisdiction to regulate the activities of public utilities "so far as may be necessary for the purpose of carrying out the provisions of this Title." Accordingly, the Board has an obligation and the jurisdiction to ensure, among other things, that utilities provide safe, adequate and proper service at just and reasonable rates, that there exists no cross-subsidization between competitive and monopoly services, and that the rates or services are not unjust, unreasonable, unjustly discriminatory or unduly preferential.

With respect to the substance of the petition, a critical issue which must be addressed is whether JCP&L should be permitted to offer the power conditioning services as a tariffed utility service, or whether some other format is more appropriate, such as offering the service through a separate, nonregulated subsidiary. The proposed CEP and PDP programs offer services and equipment which are substantially similar to services and equipment available in the private sector marketplace. The Board must ensure that these competitive services are not unfairly cross-subsidized by the monopoly services which the utility provides.

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1. We note that the subsequently enacted Telecommunications Act 1992, N.J.S.A. 48:2-21.16 et. seq. does confer upon the Board specific jurisdiction to consider competitive effects associated with a plan for alternative regulation, N.J.S.A. 48:2-21.18(3).

Although the proposed programs offer services and equipment which are similar to services and equipment available in the nonregulated marketplace, the Board believes that there is sufficient nexus between power conditioning and the provision of safe, adequate and proper service to warrant Board approval of the CEP and PDP programs as optional tariffed utility services. It is clear from the record in this matter that, in addition to the general requirement that all customers have access to a safe, adequate and proper level of service from JCP&L's system, many individual customers now have a need for an even higher quality of service, because much of today's modern sophisticated electronic equipment requires such a high quality of power service. In designating these services as optional tariffed utility services, the Board can assure that these services are made available to all of JCP&L's customers who desire such service from the utility, under standards and conditions prescribed by this Board. Customers will, of course, be free not to avail themselves of these services, or to obtain similar services from other vendors.

The Board recognizes and emphasizes that these proposed services will be offered on a voluntary and individual basis, and the costs of providing these services must be borne entirely by those customers desiring this higher quality service. In order to ensure that no cross-subsidization by JCP&L's general ratepayer base occurs, we FIND that strict accounting and monitoring oversight is essential.

To that end, we note that JCP&L has provided a detailed cost breakdown in support of its proposed charges, and has also submitted detailed work order charging and accounting guidelines by which actual ongoing costs will be tracked. We HEREBY DIRECT JCP&L to work with Board Staff to develop specific ongoing periodic accounting reports which will enable the Board to track the costs and revenues associated with the CES and PDP tariff services and ensure that no cross-subsidization takes place. We note that such accounting reports may be supplanted in the future by accounting regulations which are presently being developed by the Board as an outgrowth of our decision in New Jersey Natural Gas (Docket No. GT91010051). It is our anticipation that with these periodic accounting reports, cross-subsidization of these services can be prevented. Nonetheless, we reserve the right to consider and impose to the extent permitted by law, other measures, including a separation into a separate subsidiary, should this subsequently appear necessary.

Notwithstanding our determination herein to permit JCP&L to offer the CEP and PDP programs as optional tariffed utility services, we believe that certain measures which emerged during the course of discussions among JCP&L, the contractors, the Coalition and Board Staff would be appropriately implemented in order to address the certain issues raised herein. Specifically, we FIND

that JCP&L shall pay a finder's fee of \$15 to the first 1,500 contractors each year who provide business leads to JCP&L that result in customers who sign up for CEP service. We further DIRECT JCP&L to work with the N.J.S.C.E.C to develop power disturbance training and an independent certification process which, we believe, will enhance and expand the opportunities of the private electrical contractors to participate in the conditioned power service programs as sub-contractors or otherwise participate in this market.

With respect to the issue of bill inserts, we concur with the Coalition and FIND that direct marketing by the utility of these services, which are also available in the private marketplace, via bill inserts which are paid for by ratepayers, would provide the utility with an unfair advantage and cross-subsidized access to potential customers. As such, we ORDER that JCP&L shall not market the CEP nor PDP services through the use of utility bill inserts. Separate mailings may be employed, the cost of which must be allocated entirely to the CEP and PDP programs. With further regard to the competitive issues, we note and emphasize the plans presented by JCP&L to implement the bulk of the PDP services through the use of independent subcontractors, which would be procured via a bidding process. As such, we foresee the emergence of new business opportunities for the private sector. We do concur with JCP&L that it is practical and reasonable that only JCP&L personnel perform the installation of the meter socket surge protection devices associated with the CEP program. We believe that providing third parties the ability to work directly on retrofitting utility electric meters raises legitimate concerns regarding safety and operating efficiency.

Finally, with respect to JCP&L's proposal to levelize the CEP rates for an initial five year period, we do not believe that such a proposal would permit the Board to appropriately respond to a future finding that the services were being offered at rates which do not reflect the full cost of service. Therefore, while we accept the proposed rates as filed and subsequently modified, the Board REJECTS the proposal to freeze the rates for five years and reserves its right to modify the rates at any time should cost data demonstrate that the services are being offered at prices below cost.

We HEREBY APPROVE, pursuant to our authority under N.J.S.A. 48:2-21, the offering by JCP&L as an optional tariffed utility service ~~the~~ CEP and PDP programs as filed and/or modified herein and, accordingly, the Board retains the jurisdiction to review, approve, modify and actively supervise all aspects thereof. No changes to the rates, terms and conditions of the tariff may be made without prior Board approval.

We note that subsequent to the Board's oral ruling in this matter at its August 5, 1993 agenda meeting, by letter dated August 25, 1993, JCP&L submitted revised proposed tariff sheets and

supporting workpapers, which reflect the inclusion of the added expense associated with the finder's fee and advertising expense related to resolution of the bill insert issue. The revised monthly charges under Rider CEP are as follows: single phase meter socket surge suppression device - \$2.75; three phase meter socket surge suppression device - \$5.00; two outlet surge suppressor - \$0.60; four outlet surge suppressor - \$0.75; 0.75 KVA UPS - \$20.00; 1.00 KVA UPS - \$25.00; 1.50 KVA UPS - \$30.00. The Board HEREBY APPROVES these revised tariffs for implementation.

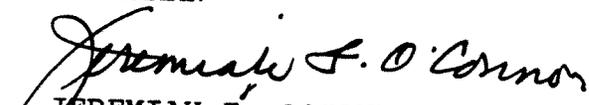
Finally, it has come to the Board's attention that certain of the State's other regulated electric utilities have been or currently are offering, on a pilot basis or otherwise, similar power conditioning services, or other services for which no prior approval from the Board has either been sought or obtained. To the extent that such services being offered to individual customers can result in cross-subsidization by general ratepayers, or may have other inappropriate impacts, the Board must have the opportunity to review such services and the charges related thereto. We HEREBY DIRECT the State's investor-owned electric utilities, by copy of this Order, to submit to this Board by December 1, 1993 a list of all maintenance, repair, power conditioning or equipment sales or lease services currently being provided to customers for which no specific tariff approval has been obtained. Along therewith, these utilities shall provide pricing schedules and/or policies for each of these services, along with accounting procedures in order that the Board can ensure that said services are not being subsidized by other ratepayers and/or are otherwise in the public interest. We commend JCP&L for its forthright approach in the instant matter to seek Board approval for this new service and attempt to address concerns raised with regard thereto prior to implementation.

DATED: October 19, 1993

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SECRETARY

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DIVISION OF ELECTRIC  
BOARD OF REGULATORY COMMISSIONERS  
TWO GATEWAY CENTER  
NEWARK, NJ 07102

**MICHAEL AMBROSIO**  
DIVISION OF ELECTRIC  
BOARD OF REGULATORY COMMISSIONERS  
TWO GATEWAY CENTER  
NEWARK, NJ 07102

**CHARLES F. BELLINA**  
CHAZ ELECTRICAL CONTRACTORS  
P.O. BOX 218  
RINGWOOD, NJ 07456

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PROTECTION COMMITTEE  
NEW JERSEY STATE COUNCIL OF  
ELECTRICAL CONTRACTORS ASSOC.  
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NEW JERSEY COALITION FOR FAIR  
COMPETITION  
813 FIRST AVENUE  
ASBURY PARK, NJ 07712

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AFFAIRS  
JERSEY CENTRAL POWER & LIGHT CO.  
310 MADISON AVENUE  
MORRISTOWN, NJ 07962

**MICHAEL J. FILIPPONE, RATES DIRECTOR**  
JERSEY CENTRAL POWER & LIGHT CO.  
310 MADISON AVENUE  
MORRISTOWN, NJ 07962

**SUSAN D. MARANO, MANAGER**  
RATE/REVENUE REQUIREMENTS  
JERSEY CENTRAL POWER & LIGHT CO.  
310 MADISON AVENUE  
MORRISTOWN, NJ 07962

**GERALD W. CONWAY**  
BERLACK, ISRAELS & LIBERMAN  
95 MADISON AVENUE  
MORRISTOWN, NJ 07960

**SUSAN REISNER**  
DEPT. OF THE PUBLIC ADVOCATE  
DIVISION OF RATE COUNSEL  
31 CLINTON STREET  
P.O. BOX 46005  
NEWARK, NJ 07102

**FRANCIS E. DELANY**  
PUBLIC SERVICE ELECTRIC & GAS CO.  
80 PARK PLAZA  
NEWARK, NJ 07101

**JIM LEES**  
ATLANTIC CITY ELECTRIC CO.  
6803 BLACK HORSE PIKE  
P.O. BOX 1264  
PLEASANTVILLE, NJ 08232

JOHN L. CARLEY  
ROCKLAND ELECTRIC CO.  
ONE BLUE HILL PLAZA  
PEARL RIVER, NY 10965

HELENE WALLENSTEIN, DAG  
DEPT. OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
124 HALSEY STREET  
P.O. BOX 45029  
NEWARK, NJ 07102